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In the recent case of Upton v. Hume, decided by the Supreme Court of Oregon, some questions were considered that should be noted in political circles. The Oregon court held among other things that a newspaper article calling a congressional candidate a "perjured villain" and charging that he had deceived a court of justice by false swearing, was libelous *per se*, and not privileged by the fact of the plaintiff's candidacy. The rule gathered by the court from the authorities was that the fitness and qualifications of a candidate for an elective office may be a subject for the freest scrutiny and investigation, either by the proprietor of a newspaper or by a voter or person having an interest in the matter, and that much latitude must be allowed in the publication, for the information of voters, of charges affecting the fitness of a candidate for the place he seeks, so long as it is done honestly and without malice. Nor will such publication be actionable without proof of express malice, although it may be harsh, unjust, and unnecessarily severe, for these are matters of opinion of which the party making the publication has a right to judge for himself. In the case of such a publication the occasion rebuts the inference of malice which the law would otherwise raise from its falsity and no right of action exists, even though the character of the party has suffered, unless he is able to show the existence of actual malice. But, when the publication attacks the private character of a candidate by falsely imputing to him a crime, it is not privileged by the occasion, either absolutely or qualifiedly, but is actionable *per se*, the law implying malice; and it is no justification that the publication was made with an honest belief in its truth, in good faith, and for the purpose of influencing voters. Such publications can only be justified by proof of their truth. This statement of the law is supported by many decisions among which are Curtis v. Mussey, 6 Gray, 216; Aldrich v. Printing Co., 9 Minn. 133; Hamilton v. Eno, 81 N. Y. 116; Com. v. Wardwell, 136 Mass. 164; Barr v. Moore, 87 Pa. St. 385. If it can be said that the cases of Bays v. Hunt, 60 Iowa, 251, Mott v. Dawson, 46 Iowa, 533, and State v. Balch, 31 Kan. 465, when read in the light of the facts, announce a contrary doctrine, they do not seem to be supported either by reason or the weight of authority. To permit a defendant who has published of a candidate false and defamatory statements, says the court in the Oregon case, concerning his private acts and character, on being pursued in the courts for this grievous wrong, to say in justification that he was actuated by no ill will or malice towards the plaintiff, but his motives were pure, and his conduct actuated only by a desire for the public good, would abandon candidates to all the fierce tempests of defamation which either personal spite or political interest may suggest. The only safe evidence of a man's intentions are his acts, and, if he accuses another of a crime, he must conclusively be presumed to have intended to injure him. Let the acts, conduct and public record of a candidate, so far as it may affect his fitness or qualification for office, be the subject of free and vigorous comment, so long as it is done in good faith; but when his private life is assailed by imputing to him a crime, let his accuser either answer in damages, or prove the truth of the charge. The term "freedom of the press," which is guaranteed under the constitution, has led some to suppose that the proprietors of newspapers have a right to publish with impunity charges for which others would be held responsible. But this is a mistake. The publisher of a newspaper possesses no immunity from liability on account of a libelous publication, not belonging to any other citizen. Apropos of this case the *New York Law Journal* very properly says that "the practical immunity which newspapers enjoy in this country, especially about election time, is a great public disadvantage. It keeps many decent men out of public life who might be induced to stand as candidates for office if this did not entail, also, standing in a pillory. It also tends to blunt the force of legitimate criticism upon aspirants for place, emanating from conscientious and responsible scources, because the public, from being habituated to mud-throwing, comes to regard with comparative indifference anything that may be said to a candidate's discredit. The libel and slander of political campaigns offer a subject as to which it is not unprofessional or unpatriotic to hope for an increase of litigation."

NOTES OF RECENT DECISIONS.

FRAUDULENT CONVEYANCE — INSTRUCTIONS.—The decision of the Supreme Court of Missouri in the case of Alberger v. White, 23 S. W. Rep. 92, as to the accuracy of certain instructions to the jury in reference to fraudulent conveyances is instructive. In that case C sold to W his business. W paid some cash, gave his note, agreed to assume existing obligations, turned over the accounts due, and agreed to pay half the loss on the accounts not collected. As collateral security for these obligations, W gave to C a note secured by deed of trust on the stock. It was contended by creditors that there was fraudulently included in the note more than the amount of all these obligations. It was held that an instruction that though C had a right to take a note, secured on the property of W, for "any *bona fide* debt of W to him," whether due or to become due, yet if, at the time the note and deed were executed, W was indebted to others, and the note was for a larger amount than W owed, or was liable for to C, and both knew this, then the note and deed were fraudulent as to such creditors was not open to the construction that C could not be secured by such note and mortgage against the old obligations which W had assumed, and that an instruction that direct evidence is not required to establish fraud, but it may be inferred from all "the facts and circumstances of this case," and that, if the jury believe certain facts, they shall find that there was a fraudulent conveyance, does not charge the jury that the facts show fraud.

The court also ruled that though a creditor may take security, even when he knows that it will delay the debtor's other creditors, and that the debtor's purpose is to hinder such other creditors, provided the creditor does not participate in the fraudulent purpose of his debtor, still there was no error in instructing, if W gave the note and deed to C with intent to hinder his creditors, and C knew of such intent, and aided or "in any manner" assisted him in carrying out such fraudulent intent, the security would be void, and that there is no error in an instruction that if the debtor made the instruments with intent to hinder, delay, or defraud his creditors, and the secured creditor knew this, and "participated in such intent," in any manner, the instruments would be void, though the creditor had a valid debt secured thereby. Some of the judges of the court dissent from the conclusions of the court.

HUSBAND AND WIFE — WIFE'S SEPARATE PROPERTY—CONVEYANCE BY WIFE DIRECT TO HUSBAND.—The case of Rico v. Brandenstein, 33 Pac. Rep. 480, decided by the Supreme Court of California brings up the question as to the validity of conveyance from the wife to the husband, of her separate property. Const. Cal. 1849, Art. 11, § 14, provided that all property of the wife, owned before and acquired after marriage, shall be her separate property, and laws should be passed, defining her rights in relation thereto. Act April 17, 1850 (St. 1850, p. 254), gave the husband the control of the wife's separate property during coverture, but provided that no alienation thereof could be made, or lien thereon created, unless by instrument in writing, signed by both husband and wife, and acknowledged by her on privy examination. Section 7 provided that when any sale is made by the wife, of her property, for her husband's benefit, it shall be deemed a gift, and neither she, nor those claiming under her, shall have any right to recover the same. Act April 16, 1850, § 19, provided that "a married woman may convey any of her real estate by any conveyances thereof executed and acknowledged by herself and her husband," etc. It was held that the common law disability of the husband to take a conveyance direct from the wife was not removed, and that a deed of trust of the wife's separate property, executed in 1857 by a married woman and her husband to the latter, was void. Searle, C., after stating the rule of the common law to the effect that the wife could not convey her separate property to her husband and reciting the statutes bearing upon the question, says:

A number of other statutes might be referred to, tending to indicate the evident policy of our lawmakers, to loosen the chains which bound married women at the common law, and, so far as their separate property is concerned, to confer upon them like power of alienation with that possessed by their husbands. Step by step the work has gone on, until now "a conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner." Civil Code, § 1187. We are dealing, however, with a question which depends, not upon the present condition of the law, but upon the *status* and rights of married women as they existed in 1857, the date of the deed under consideration. No ques-

tion is made here as to the due execution of the deed by the husband and wife, or that it was properly acknowledged as required by statute. The contention of respondents in this behalf is that the deed is void because at the date of its execution, to-wit, November 9, 1857, a married woman could not convey real property directly to her husband. The husband was required to join in the conveyance. The objects of the statute in requiring the husband to join with his wife in the conveyance of her separate property, as it has been said, was to afford her his protection against imposition and fraud, and to aid her by his counsel and advice. Meagher v. Thompson, 49 Cal. 190. The requirement of the statute is analogous to the rule of the civil law, under which the wife must have the authorization of her husband, or a decree of a judge, before she could convey any of her rights, or enter into a civil contract. The wider experience of men in business affairs, their better opportunities for becoming conversant with property values, and the mode of its transfers, as well as the important object of promoting unity of purpose and harmony of action in the close relation existing between husband and wife, may well have conduced to the enactment of the law requiring them to join in a conveyance of property which, while belonging to the wife, was yet subject to the management and control of the husband. The law required them to join in the conveyance, and there is no disposition to question either its wisdom, or its binding force; and these remarks are only indulged as tending to a better understanding of the cognate question, can the husband and wife convey her separate real property to the former?

This court has repeatedly decided that a husband, when free from debt, may make a gift to his wife of either his separate property, or of the community property of the husband and wife. Barker v. Koneman, 13 Cal. 9; Peck v. Brummagim, 31 Cal. 441; Dow v. Mining Co., *Id.* 653; Woods v. Whitney, 42 Cal. 361; Higgins v. Higgins, 46 Cal. 263. It does not necessarily follow that the converse of the proposition is true, and that the wife can convey by way of gift to her husband. If, however, she cannot do so, or, rather, if she could not do so under the law we are considering, viz., the statute in force in 1857, it must be because of the inherent condition of the parties as husband and wife. The owner of property competent to convey may convert himself into a trustee by making a proper declaration of the trust, in writing. Suarez v. Pumpelly, 2 Sandf. Ch. 336; Pinkett v. Wright, 2 Hare, 120. A trust is valid only to the extent of the legal capacity of the one creating it. Tiff. & B. Trusts, p. 2. Any person may create a trust who is capable of making a valid distribution of property. The power to dispose of property involves the right to attach such limitations to the act of disposition as will vest the legal estate in one, and the beneficial interest in another. At common law, neither husband nor wife could convey property directly to the other. The power to alienate and to take property on the part of the husband was unaffected by marriage, except in the single instance of conveyances to and from his wife. To the wife the common-law system was a source of constant repression. Her husband became the absolute owner of her personal property, and was entitled to the rents, issues, and profits of her real estate. To relax the severity of the rules of her environment, as a wife, many of the States have adopted laws similar to the one under consideration, empowering her to convey her real property by joining with her husband in the deed of conveyance; and in a few of the States—New York and California (since 1891) included—a conveyance by a married woman may be made in the same manner, and has the same effect, as if she were unmarried. Under these laws, however, the courts, in numerous instances, still adhere to the doctrine that the wife cannot convey her property directly to her husband.

The general result of the reasoning of the cases may be summarized as follow: (1) These statutes are for the benefit of married women, and not for that of their husbands; and any construction which would result in making it more easy for the husband to secure control of the estate of the wife would tend to defeat the very object of the law. (2) The inhibition of the common law, as applied to the husband, was that he could neither convey to his wife, directly, nor be a grantee from her; and, while the right of the wife to take by gift removes the impediment to a voluntary conveyance from the husband to her, yet the right to receive such voluntary conveyance from the wife has not been conferred upon the husband, and he stands, as at common law, incapacitated from taking by deed of gift directly from his wife. (3) The "power to convey and devise real and personal property as if she was unmarried" does not enlarge the powers of the grantees under conveyances by her, and she could not devise to a corporation or person incapable of taking by will, or convey to one incompetent to be a grantee. (4) To render a conveyance from the wife to her husband valid, the husband's common-law disability, as well as that of the wife, must be removed. White v. Wager, 25 N. Y. 328; Brooks v. Kearns, 86 Ill. 547; Scarborough v. Watkins, 9 B. Mon. 545; Cards, Leg. & Eq. Rights Mar. Wom. § 428; Amer. & Eng. Enc. Law, tit. "Husband and Wife," p. 794; Bish. Mar. Wom. §§ 711, 712; Kinnaman v. Pyle, 44 Ind. 275; Winans v. Peebles, 32 N. Y. 423; Sims v. Rickets, 35 Ind. 181.

I find no case extant in which, under a statute requiring the husband and wife to join in the conveyance of her separate property, a sale and conveyance from the latter to the former has been sustained. The law having provided for the joinder of the husband in this class of conveyances, with a view, as has often been declared by this court, of giving the wife the benefit of the husband's counsel, advice, and judgment, it would seem strange and illogical to permit him at the same time to act as her opponent, as one working against her interests, and seeking to obtain her land for himself, either with or without limitations upon the effect of the conveyance. In Colorado, Iowa, and some other States, statutes have been passed, giving to married women the same rights of alienation of their separate property as those enjoyed by unmarried women. Where such laws prevail, we may reasonably expect to see their right to convey directly to their husbands, as well as to others, finally upheld, as has already been done in a number of cases. Wells v. Caywood, 3 Colo. 487; Simms v. Hervey, 19 Iowa, 287; Robertson v. Robertson, 25 Iowa, 350; Allen v. Hooper, 50 Me. 371; Burdeno v. Amperse, 14 Mich. 97.

The views herein enunciated are expressly confined to an interpretation of the statute as it existed prior to the amendment of 1891, and are not intended as an exposition of the rights of married women under the broader ægis of that amendment. I am of opinion that, under the law as it existed in 1857, the husband and wife could not legally convey her separate real estate to the husband, and that the deed of trust to the latter, set out in the record, was void. This view renders a consideration of the other points made in the case unimportant. The judgment and order appealed rom should be affi rmed.

CRIMINAL LAW—SHOOTING AT ANOTHER—VENUE—STATE LINE.—An interesting case in the subject of venue in criminal prosecution for shooting, is Simpson v. State, 17 S. E. Rep. 984, decided by the Supreme Court of Georgia. It was there held that a person in a boat on the Savannah river, within 30 yards of the Georgia side, at a point where the river is at least 175 yards wide, is *prima facie* in the State of Georgia, and that the offense of shooting at another is committed in this State when one in the State of South Carolina, without malice aforethought, but not in his own defense, or under other circumstances of justification, aims and fires a pistol at another who at the time is in this State, although the ball misses him, and strikes the water in this State, near the boat which he occupies. Lumpkin, J., says:

At the time of the firing the prosecutor was in a boat upon the Savannah river, and within the State of Georgia, and the accused was standing upon the bank of the river in the State of South Carolina. It was conceded that if either or both of the balls had struck the prosecutor an offense of some kind would have been committed in Georgia, upon the idea that the act of the accused took effect in this State; but it was contended that, inasmuch as the prosecutor was not struck, no effect whatever was produced in Georgia by the act in question. This contention is not well founded in point of fact, for the evidence shows conclusively that, although the prosecutor was not injured, the balls did strike the water of the river in close proximity to him, within this State, and therefore it is certain that they took effect in Georgia, although not the precise effect intended, assuming that the verdict correctly finds it was the deliberate purpose of the accused to actually shoot at the prosecutor. What the accused did was a criminal act, and it did take effect in this State. Mr. Bishop says: "The law deems that a crime is committed in the place where the criminal act takes effect. Hence, in many circumstances, one becomes liable to punishment in a particular jurisdiction while his personal presence is elsewhere. Even in this way he may commit an offense against a State or county upon whose soil he never set his foot." 1 Bish. Crim. Proc. § 53. And see Bish. Crim. Law, § 110. Of course, the presence of the accused within this State is essential to make his act one which is done in this State, but the presence need not be actual. It may be constructive. The well-established theory of the law is that, where one puts in force an agency for the commission of crime, be, in legal contemplation, accompanies the same to the point where it becomes effectual. Thus, a burglary may be committed by inserting into a building a hook or other contrivance by means of which goods are withdrawn therefrom; and there can be no doubt that, under these circumstances, the burglar, in legal contemplation, enters the building. So, if a man in the State of South Carolina criminally fires a ball into the State of Georgia, the law regards him as accompanying the ball, and as being represented by it, up to the point where it strikes. If an unlawful shooting occurred while both the parties were in this State, the mere fact of missing would not render the person who shot any the less guilty. Consequently, if one shooting from another State goes, in a legal sense where his bullet goes the fact of his missing the object at which he aims cannot alter the legal principle. Cases are numerous in which it has been held that where a person wounds another in one State or country, but the person wounded dies elsewhere, beyond its territorial boundaries, the courts of the State or country in which death occurred have jurisdiction to try the offense. A leading case on this line is that of Tyler v. People, 8 Mich. 320, in which there was a dissenting opinion by Justice Campbell. The ruling of the majority of the court, however, was approved in the case of Com. v. Macloon, 101 Mass. 1. Justice Gray, who delivered the opinion in the latter case, says, on page 7, that if one's "unlawful act is the efficient cause of the mortal injury, his personal presence at the time of its beginning, its continuance, or its result, is not essential. He may be held guilty of homicide by shooting, even if he stands afar off, out of sight, or in another jurisdiction;" and the words quoted are followed by apt illustrations. On page 17 of the same report Justice Gray disapproves the dissenting opinion of Justice Campbell above mentioned. There is, however, a clear distinction between cases like the one just cited, where a wound is inflicted in one jurisdiction and death ensues in another, and cases like the present, where the accused in one State puts in operation a force which takes effect in another. On page 343 of 8 Mich., *supra*, this distinction is clearly stated by Justice Campbell. He says the doctrine of constructive presence is not applicable to a case like that with which he was then dealing and then uses the following language which sustains our ruling in the case at bar. Speaking of constructive presence, he says: "All that it amounts to is that the crime shall be regarded as committed where the injurious act is done. A wounding must, of course, be done where there is a person wounded, and the criminal act act is the force against his person. That is the immediate act of the assailant, whether he strikes with a sword or shoots with a gun; and he may very reasonably be held present where his forcible act becomes directly operative." This doctrine is supported by Rorer on Interstate Law, 241, 243, 244, citing Johns v. State, 19 Ind. 421, 423. And see Whart. Confl. Laws, § 825, and notes on pages 717, 718; Whart. Crim. Law. §§ 278-280. In Adams v. People, 1 N. Y. 173, it appeared that the accused forged a paper in Ohio, upon which he procured money in New York, through an innocent agent, without going into the latter State. He afterwards voluntarily went into that State, and was indicted and tried for the crime. It was conceded by both court and counsel that he was guilty of committing the crime in the State of New York, and the question upon which the case turned was simply whether are not, inasmuch as he owed no allegiance to that State, he could be tried and punished therein. In U. S. v. Davis, 2 Sum. 482, it appeared that a gun was fired from an American ship lying in the harbor of Raiatea, one of the Society isles, by which a person on a schooner belonging to the natives, and lying in the same harbor, was killed; and it was held that the act, in contemplation of law, was done on board the foreign schooner, where the shot took effect, and that jurisdiction of the crime belonged to the foreign government, and not to the courts of the United States. In Hawes on Jurisdiction (section 110) it is laid down that "a crime may be committed within the jurisdiction of a State, although the person committing it never was within its borders, if the act takes effect

there." An interesting discussion pertinent to the question involved may be found in 6 Crim. Law Mag., beginning on page 155, in an article entitled "Dynamiting and Extraterritorial Crime." "A party who, in one jurisdiction, or in one county, may put in operation a force that does harm in another, may be liable in either for the offense." Brown, Jur. § 92. This section also contains numerous illustrations which are apt and pertinent. See, also, Reg. v. Rogers, 14 Cox, Crim. Cas. 22. The above authorities demonstrate beyond question that a criminal act begun in one State and completed in another renders the person who does the act liable to indictment in the latter. In view of these authorities, there cannot in the present case be any doubt whatever that Simpson would have been indictable in Georgia if a ball from his pistol had actually wounded Sadler. That this would be true is too well-established for serious controversy. The able and zealous counsel for the plaintiff in error candidly conceded that such would be the law, but contended that, as the balls "took no effect in Georgia," the entire act of the accused was committed in South Carolina, and that he really did nothing in this State. We have endeavored to show that this contention is not sound. As we have already stated, the act of the accused did take effect in this State. He started across the river with his leaden messenger, and was operating it up to the moment when it ceased to move, and was, therefore, in a legal sense, after the ball crossed the State line up to the moment that it stopped, in Georgia. It is entirely immaterial that the object for which he crossed the line failed of accomplishment. It having been established by abundant authority and precedent that in crime there may be a constructive as well as an actual presence, there can be, in a case of this kind, in which the act of the accused, when analyzed, is simply an attempt to unlawfully wound another by shooting, no rational distinction in principle, as to the question of jurisdiction, whether the attempt is successful or not. The criminality was complete, and the offense was perpetrated in Georgia, irrespective of results.

"NEW CRIMINAL LAW"—"SABBATH-BREAKING" AS A NUISANCE.

The writer's attention has lately been attracted to a case of miscitation on the part of a well-known text writer, which is not only misleading, but, as will appear later, has actually misled at least one court of last resort. It is from Mr. Bishop's "New Criminal Law," and a better illustration of "newness" it would be hard to find. Mr. Bishop says (Vol. 2, Sec. 465, 2d Ed., 1892): "The doctrine is that acts of unindictable Sabbath-breaking may by multiplication become an indictable nuisance." Now, if this means anything at all, it means that any act of a "Sabbath-breaking" may become an indictable nuisance by multiplication, though it be not indictable under the statute punishing "Sabbath-breaking." The fact that "Sabbath-breaking" only exists by virtue of the statute does not bother Mr. Bishop, nor his single authority. But the point is that the single authority does not at all sustain Mr. Bishop in the "new" principle of criminal law. That single authority is Commonwealth v. Jeandell.[1] Nothing is said in that case about a "nuisance." The case was one of "breach of the peace." Every breach of the peace may be a nuisance, but every nuisance is certainly not a breach of the peace. And it is making "new" criminal law to apply to the general subject of nuisance what is judicially settled as to the particular subject of breach of the peace only. The court held in this case that repeated acts of running horse cars past a church produced such a disturbance as to constitute a breach of "the special peace of Sunday,"[2] established by the statute forbidding work on that day. It was careful to lay the stress on the disturbance, and quoted two cases previously decided in the same State to show that "Sabbath-breaking," if done without noise or disorder or not "so as to disturb the worship of others," could not be treated as a breach of the peace."[3] The first of these cases was at *nisi prius*, and was the case of parties who interrupted a clergyman whose authority to occupy the pulpit they disputed. Disorder arose, and arrests were made. The question of Sunday labor was not involved at all, though it is disingenuously intimated in the head-notes that it was. Nor was "Sabbath-breaking" of any sort really at issue. The crime was a disturbance of the right of the people "peaceably to assemble," and its punishment did not necessarily include a consideration either of the time or object of their assembling.[4] The second citation on this point is also from *nisi prius*. It expressly holds that "violating the Sabbath," as by selling newspapers without 'crying them' or thrusting them at people, is not a 'breach of the peace.'" Nothing is said about "repetitions" of the act constituting a nuisance or any other offense.[5]

Mr. Bishop's single authority, however, says, "that work publicly performed (on Sunday) might amount to a breach of the peace, seems to have been the opinion of

[1] 2 Grant (Pa.), 506.
[2] Sec. *Id.* p 511.
[3] Sec. *Id.* p. 506.
[4] Duprey v. Commonwealth, Br. 44.
[5] Commonwealth v. Teaman, 1 Phila. 167.

Chief Justice Tilghman in one of the cases which it cites. It is sufficient to observe of the case referred to for this "*semble*" that it was a case involving the right of a justice to enter a man's premises "in pursuit of testimony," with the view of proceeding against him "for a breach of the Sabbath"—not of the peace. So that, according to the report, if what Mr. Justice Tilghman says about "breach of the peace" has any bearing at all on the question, its only effect is to intimate that "Sabbath-breaking" cannot be punished unless the peace is broken thereby—a construction of the "Sunday law" that no believer therein will willingly accept.[6]

So that Mr. Bishop's single authority for the proposition that repeated acts of Sabbath-breaking may constitute a nuisance affords no support whatever for that proposition; and for the proposition which it does support, that such repeated acts may constitute a breach of the peace, it rests itself upon a very weak and unsubstantial foundation.

And not only so, but if Mr. Bishop had followed his own advice to "look and see," he would, by looking, have seen that this notion, utterly unreasonable in itself, that Sunday work could, *per se*, constitute a nuisance, has been distinctly repudiated by the entire Supreme Court of Pennsylvania. And this occurred eight years after "a single judge," to use Mr. Bishop's language, had held, not as Mr. Bishop says, that "Sabbath-breaking" might by repetition become a nuisance, but that its repetition might be treated as "a breach of the peace." Jeandell's case was one involving the running of horse cars, as said, and was decided in 1854. In 1867, in precisely a similar case, the Supreme Court of Pennsylvania ruled as matter of law that, even if congregations were actually disturbed in "listening to a sermon," etc., by the cars, the injury thus done them was a purely spiritual one, *damnum absque injuria*, and beyond judicial cognizance.[7]

But the Supreme Court of Tennessee took Mr. Bishop's "new" criminal law, without taking the advice of his preface to "look and see." It cited his book, and his reference from his book as establishing the law that any Sabbath-breaking if repeatedly done was indictable as a nuisance, and applied that "new" law to the case before it, wherein there was not a particle of evidence that any one had been disturbed or any breach of the peace committed. In order to follow Mr. Bishop, the court was forced to ignore, to pass in silence two cases in its own State. In 1874, holding that a violation of the Sunday law by doing the work of a barber did not constitute a nuisance, the Tennessee court said "to hold that it becomes a nuisance when carried on on Sunday in a perversion of the term nuisance."[8] Again, in 1883, holding that a city council could not pass a "Sunday ordinance" under a charter power "to prevent and remove nuisance," the Supreme Court of Tennessee observed, "it would be a strained and far-fetched construction to hold that violations of the Sabbath *per se* would constitute a nuisance."[9] And yet, only three years after this last decision, the Supreme Court of that very same State, without so much as mentioning the two cases just cited, reverses their law completely, relying for its justification in so doing on not a single reported case from any other State, but solely upon Mr. Bishop's misstatement of the law as expressly laid down in the very State to which he appeals. And what renders the matter more extraordinary is that, out of the five judges comprising the court, at least three appear to have sat in all three of these cases, and Deaderick, C. J., who, in the second case, thought it "a strained and far-fetched construction" to hold "Sabbath-breaking" a nuisance, delivered no dissenting opinion in the last case.[10]

Some support for the position that repeated acts of "Sabbath-breaking" constitute a nuisance might be imagined to exist in the rule, as stated by Mr. Bishop in Sec. 967 of his "New Criminal Law," that repeated sales of liquor on Sunday in a certain house may constitute it a nuisance. Mr. Bishop's cites three authorities for this statement. The

[6] This case is Commonwealth v. Eyre, 1 S. & R. 347 (1815). Sec. p. 350, etc.

[7] Sparhawk v. U. P. R. W., 54 Pa. St. 401.

[8] State v. Larry, 7 Bos. 95, 97.

[9] Mayor, etc. v. Linck, 12 Lea, 494, 586.

[10] The case in which this remarkable ruling was made is that of Parker v. State, 16 Lea, 476 (1886). The prosecution for nuisance was, of course, selected because, in the opinion of those instigating the proceedings, the small sum of four dollars was an insufficient punishment for the awful crime of "Sabbath breaking," though the legislature of Tennessee thought it enough to prescribe in the statute creating the crime.

first was a case of "disorderly house" not "Sabbath-breaking."[11] The court expressly says: "The offense of keeping a disorderly house or nuisance consists not in the fact that the keeper commits any of those crimes (fighting, cursing, gambling, tippling, etc.), but that he permits his house to be made a nuisance to the neighborhood by suffering the commission of these crimes there, whether by himself or others is immaterial." Plainly, the nuisance here is not the repeated sales, but the "keeping" of the place—not the "Sabbath-breaking" named in the statute at all, but the providing of the location and the conveniences for the statute's violation. Mr. Bishop's second citation was not a case of "Sabbath-breaking" any more than his first. The taverner was indicted under a statute which declared all places wherein liquor was sold, to be nuisances. And the court said, rightly, of course, that a previous conviction for selling liquor on Sunday at the same place was for a different offense.[12] As to Mr. Bishop's third citation,[13] it simply holds that Sunday liquor selling is not a nuisance at all under the statutory law of Wisconsin. It may be said that the identification of "Sabbath-breaking"—"vulgarly, but improperly so called" says Mr. Blackstone—with the committing of a nuisance, even when the breaches are many, rests on one case as against two in Tennessee and Mr. Bishop's statement.

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[11] State v. Williams, 30 N. J. L. 102.

[12] Commonwealth v. Shea, 14 Gray (Mass.), 386, 387 (1860).

[13] State v. Wacker, 11 Wis. 672.

WATERS — RIPARIAN RIGHTS — NAVIGABLE RIVERS — GRANTS FROM THE UNITED STATES—ISLANDS—ACCRETIONS.

COOLEY V. GOLDEN.

Supreme Court of Missouri, June 10, 1893.

1. A grant from the United States of land on a large river like the Missouri, navigable in fact, though not subject to the ebb and flow of the tide, will, even when containing no reservation or condition, pass to the grantee title only to the water's edge, but will vest in the State title to the land beneath the water, though the State has adopted the common law.

2. Where an island springs up in a navigable river, and by accretion to the shores of the island and the mainland they are united, the owner of the mainland is not entitled to the island, but only to such accretion as formed on his land.

3. Where a navigable river suddenly changes its course, the owner of the shore does not acquire title to the abandoned channel.

Brace, J., dissenting.

MACFARLANE, J.: That plaintiff owns under mesne conveyances from the government the fractional sections of the land on the margin of the waters of the Missouri river is conceded by both parties. The most important inquiry, therefore, is whether such grant from the United States, being without reservation or condition, passed to the grantee the title to the land beneath the water to the center thread of the channel, or only to that above the water line. Under the well-recognized rule of the common law, the extent of the grant is made to depend upon whether or not the river at the particular point is or is not navigable. And, again, rivers are held not to be navigable unless the tide ebbs and flows therein. In navigable streams—that is, below tide water—the soil beneath the waters was vested in the crown, in order to the protection of commerce, fisheries, and other rights deemed public. On the other hand, the soil beneath the waters of streams which are not navigable — that is, in which the tide does not ebb and flow, or above tide water— is vested in the riparian owner to the center of the channel. Lord Blackburn says: "The property in the soil, of the sea and of estuaries and of rivers in which the tide ebbs and flows, is *prima facie*, of common right, vested in the crown." Bristow v. Cormican, L. R. 3 App. Cas. 641. In discussing the question as to what will pass by a grant bounded by a stream of water, the Supreme Court of Illinois, in an early case, says: "At common law, this depended upon the character of the stream or water. If it were a navigable stream or water, the riparian proprietor extended only to high-water mark. If it were a stream not navigable, the rights of the owner extended to the center thread of the current. * * * At common law, only arms of the sea and streams where the tide ebbs and flows are deemed navigable. Streams above tide water, although navigable in fact at all times or in freshets, were not deemed navigable in law. To these riparian proprietors, bounded on or by the river, could acquire exclusive ownership in the soil, water, and fishery to the middle thread of the current, subject, however, to the public easement of navigation." Middleton v. Pritchard, 3 Scam. 510. See Hardin v. Jordan, 140 U. S. 372, 11 Sup. Ct. Rep. 808, 838.

Now, the Missouri river at the point in question is many hundreds of miles above the ebb and flow of the tide, and is, and at the time of the grant of said lands from the government was, in fact, navigable. It is contended by plaintiff that, as the common law of England has been adopted in the State of Missouri, the unqualified grant of the lands by the government should be construed according to the principles of the common law, and under such construction his title would extend to the center of the channel. The argument, being

supported, as it is, by the decisions of the courts of many States, adopting the common law rule has great weight, and is entitled to serious consideration. Having given the matter such consideration, we have reached the conclusion that the conditions under which the rule was adopted and has been adhered to in England do not exist in respect to the great rivers of the United States; and, the reason for the rule not existing, as to the Missouri river, the rule itself should not be applied if one can be found under the changed conditions which is sounder in principle and policy. In discussing the applicability of the rule of the common law to fresh water lakes, Chancellor Walworth says: "The principle itself does not appear to be sufficiently broad to embrace our large fresh water lakes, or inland seas, which are wholly unprovided for by the common law of England. As to these there is neither flow of the tide, nor thread of the stream, and our own local law appears to have assigned the shores down to the low water mark to the riparian owners, and the beds of the lakes, with the islands therein, to the public." Canal Com'rs v. People, 5 Wend. 446. Probably, no river in England, in the day of Sir Matthew Hale, who first formulated the common law rule, was navigable above tide water to more than the smallest boats. The Missouri river, at the time of this grant, was navigable for the largest of river boats for hundreds of miles. It was at the point in question, which is several hundred miles above its confluence with the Mississippi, of a width of about one mile from shore to shore. It is a tortuous stream, flowing rapidly through a valley of varying width, liable, as was shown in this case, to sudden changes of its entire bed. It is very manifest that the principle of the common law, as said by Chancellor Walworth, "is not sufficiently broad to embrace our large" western rivers. As directly bearing on the subject, the remarks of Mr. Justice Field in a recent case (Packer v. Bird, 137 U. S. 666, 11 Sup. Ct. Rep. 210) are pertinent and convincing. He says: "It is undoubtedly the rule of the common law that the title of owners of land bordering on rivers above the ebb and flow of the tide extends to the middle of the stream, but that, where the waters of the river are affected by the tides, the title of such owners is limited to ordinary high water mark. The title to land below that mark in such cases is vested in England in the crown, and in this country in the State within whose boundaries the waters lie, private ownership of the soils under them being deemed inconsistent with the interest of the public at large in their use for purposes of commerce. In England this limitation of the right of the riparian owner is confined to such navigable rivers as are affected by the tides, because there the ebb and flow of the tide constitutes the usual test of the navigability of the streams. No rivers there, at least none of any considerable extent, are navigable in fact which are not subject to the tides. In this country the situation is wholly different. Some of our rivers are navigable for many hundreds of miles above the limits of tide water, and by vessels larger than any which sailed on the seas when the common law rule was established. A different test must, therefore, be sought to determine the navigability of our rivers, with the consequent rights both to the public and the riparian owner, and such test is found in their navigable capacity. Those rivers are regarded as public navigable rivers in law which are navigable in fact; and, as said in the case of The Daniel Ball, 10 Wall. 557, 563, "they are navigable in fact when they are used or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. The same reasons, therefore, exist in this country for the exclusion of the right of private ownership over the soil under navigable waters when they are susceptible of being used as highways of commerce in the ordinary modes of trade and travel on water as when their navigability is determined by the tidal test. It is, indeed, the susceptibility to use as highways of commerce which gives sanction to the public right of control over navigation upon them, and consequently to the exclusion of private ownership, either of the waters or the soils under them. The common law doctrine on this subject, prevailing in England, is held in some of the States, but in a large number has been considered as inapplicable to the navigable waters of the country, or, even if prevailing for a time, has given way, or been greatly modified, under the different conditions there." While it is true that many of the States retain the common law rule, in others it is rejected, it being wholly inapplicable to the character of the fresh water lakes and large rivers of the United States. For exhaustive reviews of the authorities, see McManus v. Michael, 3 Iowa, 1, and People v. Canal Appraisers, 33 N. Y. 461. The latter case was distinguished in Smith v. City of Rochester, 92 N. Y. 473, and the common law doctrine substantially affirmed. The rule has been declared in many of the States inapplicable to the conditions of this country, and is wholly inconsistent with the actual navigability of the rivers, the control retained by congress over the commerce and navigation of the rivers, the rules of the general land office in the survey and sale of the public lands bordering on the rivers, and the recognition by congress of the navigability of the Missouri river. See collation of authorities in Gould, Waters, § 56, *et seq.* The act of congress providing for the government of the territory of Missouri provided that the Mississippi and Missouri rivers should be common highways and forever free to the people of the said territory and to the citizens of the United States. 2 Stat. 747, § 15. These are the very conditions upon which the right to the soil under the waters of navigable streams was retained in the crown. The rule most applicable to the condition of the Missouri river

would be that applied by the common law to navigable rivers, and the riparian owner should only take title to the water's edge.

This extended consideration of the question, as an original one, has been given in part on account of its importance, and the quantity and value of the land that may be affected, and in part on account of the earnestness and ability with which the doctrine of the common law has been supported by counsel. The identical question was very fully discussed by this court in the year 1875, in the case of Benson v. Morrow, 61 Mo. 347, in which the conclusion was reached that the application of the common law principle could not be transferred to our great public rivers, and that the proprietor of land on the banks of the Missouri river does not own to the middle of the stream, but only to the water's edge. This decision has been approved in two cases decided by division 2 of this court at this term. Naylor v. Cox, 21 S. W. Rep. 589, and Rees v. McDaniel, 21 S. W. Rep. 913. See cases cited in the opinion in the latter case.

Plaintiff, only taking title to the margin of the river, can claim, in addition to the original grants, only such land as may have been added thereto by the regular process of accretion or reliction. "Land formed by alluvion, or the gradual and imperceptible accretion from the water, and land gained by reliction, or the gradual and imperceptible recession of the water, belongs to the owner of the contiguous land to which the addition is made. There is no distinction in this respect between soil gained by accretion and that uncovered by reliction." Gould, Waters, § 155. The formation or reliction must be imperceptible, and must be made to the contiguous land so as to change the position of the water's edge or margin; hence it is said in Benson v. Morrow, *supra*, that the owner of the contiguous land is not the "owner of an island that springs up in the midst of the stream, whether the island be on one side or the other of the thread of the river. He goes only to the margin of the river. It would also logically follow that if, by accretions to such island, the water margin should unite with the shore, the newly-made land would become a part of the island, and not of the mainland, and the riparian ownership would not be extended. It is so held in Buse v. Russell, 86 Mo. 211, and Naylor v. Cox, *supra*. It makes no difference in principle that the islands in these cases had been surveyed and disposed of by the United States. The riparian owner would not take the accretion, for the reason that it was not added to his own land. Pole island sprang up in the midst of the stream, far enough from the shore, which bounded plaintiff's land, to admit, at times, of the passage of boats between it and the shore. The banks of the island and that of the north shore of the river afterwards united by accretions formed by the washing of the waters, and plaintiff was only entitled to such part thereof as was formed upon his land. Buse v. Russell, *supra;* Naylor v. Cox, *supra*. If the waters of a navigable river or lake recede gradually and insensibly, the derelict land belongs to the riparian proprietors, and their boundaries change, as the waters recede. This is on the same principle as that under which they take by accretions. The recession must be gradual and imperceptible. In case the river, from storm, flood, or other cause, entirely forsakes its channel, and forms a new one, the boundary lines remain unchanged. Ang. Water Courses, § 59; Nebraska v. Iowa, 143 U. S. 359, 12 Sup. Ct. Rep. 396; Rees v. McDaniel, *supra*, and cases cited. The change of the channel of the river in this case was of such a character, and plaintiff had no claim to the relicted land caused thereby. The boundary of his land remained at the water line of the old channel.

The claim is now made that, inasmuch as the new channel, thus formed by avulsion is at once subject to the public use, the relicted land should of right vest in the riparian proprietors, on the principle upon which the right to the accretion is sometimes placed,—that "as every proprietor whose land is thus bounded is subject to loss by the same process which may add to his territory, and as he is without remedy for his loss in this way, he cannot be held accountable for gain." New Orleans v. U. S., 10 Pet. 662, 717; Jefferis v. Land Co., 134 U. S. 189, 10 Sup. Ct. Rep. 518. It is claimed that such a rule would be peculiarly applicable and just if applied to the Missouri river, which, from its tortuous course, the rapidity of its current, and the character of its soil, is so subject to such hidden changes. Such a rule could not be justly applied, for the reason that in most cases the one who loses his land by the avulsion would gain nothing by the reliction and the one who would gain by the reliction would lose nothing by the avulsion. Notwithstanding the character of the Missouri river and that of the soil through which it flows, it is held that the principle applying to accretions and relictions in other streams apply also to it. Jefferis v. Land Co., *supra;* Nebraska v. Iowa, *supra*. The general land seems to be the only one the courts can justly apply. In view of the more rapid formations of new land by accretions and relictions, caused by the peculiarity of the river and of the soil, the time in which the formations are made, if done gradually, imperceptibly, and upon the bank, should make less difference than in case of rivers less subject to changes.

Again, it is insisted that, as the river is navigable, the general government alone has the right to the soil beneath the waters in the channel; and, as the United States construes its grants of lands bounded thereby as relinquishing its title to the center of the stream, as of lands on river that are not navigable, such grants carry the title of the grantee to the center of the channel, subject only to the rights of the public. The fact that the United States relinquished its title to the soil beneath the water does not necessarily imply that such relinquishment was intended for the

benefit of the grantee of the adjacent land. The extent of the grant depends upon the law of the State in which the land granted is situate. In the case of Hardin v. Jordan, *supra*, it is said by the Supreme Court of the United States: "In our judgment, the grants of the government for lands bounded on streams and other waters, without reservation or restriction of terms, are to be construed as to their effect according to the law of the State in which the lands lie." It is true in that case three justices dissented, but all agreed upon the foregoing proposition. Mr. Justice Brewer, who wrote the dissenting opinion, quoted approvingly from the opinion of Mr. Justice Blatchford in St. Louis v. Rutz, 11 Sup. Ct. Rep. 337, as follows: "The question as to whether the fee of the plaintiff, as a riparian proprietor on the Mississippi river, extends to the middle thread of the stream, or only to the water's edge, is a question in regard to a rule of property, which is governed by the local laws of Illinois." As has been seen, under the decisions of this court, the riparian owner took title only to the water's edge, and the grant of the United States carried his title no further. In the case of Barney v. Keokuk, 94 U. S. 324, it is said. "If the State chose to resign to the riparian proprietors rights which properly belong to them in their sovereign capacity, is not for others to raise objection." This declaration was cited with approval in Packard v. Bird, *supra*, and St. Louis v. Rutz, *supra*. It is apparent from these decisions that, when the United States relinquished its rights to the soil under the waters of the Missouri river, it was intended that the States, in their sovereign capacity, should succeed to all the rights so relinquished. We are not aware of any legislation in this State disposing of the land under the waters of its navigable rivers or of relicted land from sudden changes in the channel. Whether those whose lands have been taken by changes of the beds of the rivers should be compensated from the relicted lands is a question for the determination of the legislative department of the State. We can only say now that the ownership of land in this State is subject to such changes as may be wrought by the natural action of the waters of the navigable rivers upon it.

Plaintiff claims that he was entitled to recover a portion of the land sued for on account of a prior possession, though neither party showed title in himself. That question was fairly submitted, under the following instruction: "(6) If the plaintiff or his lessor was in possession of any portion of the land in controversy, by having the same fenced as a pasture, and the defendant afterwards, while the same was so fenced entered upon the same without plaintiff's consent, then plaintiff will be entitled to recover without proving any further title than prior possession; and, if the evidence in the case identifies with such degree of certainty any lands in plaintiff's petition described as were in the possession of the plaintiff or his leasor, and of which defendant took possession without plaintiff's consent, the plaintiff would be entitled to recover so much of the land as his evidence shows plaintiff or his leasor was in possession of, and that the defendant entered and held against him." The case was tried substantially according to the views herein expressed, and the judgment is affirmed. All concur, except Brace, J., who dissents, and Barclay, J., who expresses no opinion.

NOTE.—It would seem to be sufficient, for the purposes of this note, to state substantially the view of Brace J., who dissents from the conclusion of the court in a vigorous and exhaustive opinion. The Missouri river he says is the boundary between the States of Missouri and Nebraska. It is well settled hat where a stream which is a boundary from any c ıse suddenly abandons its old, and seeks a new, b , such change of channel works no change of bo ıdary; and that the boundary remains as it was int e center of the old channel, although no water may be flowing therein." Nebraska v. Iowa, 143 U. S. 359, 12 Sup. Ct. Rep. 396. The word "channel," as applied here to the Missouri river, means the bed in which the main stream of the river flowed, rather than the deep water of the stream as followed in navigation. Black, Law Dict. p. 193; Dunlieth & D. Bridge Co. v. County of Dubuque, 55 Iowa, 558, 8 N. W. Rep. 443. Beck, J., in delivering the opinion of the court in the case cited, says: "The word is used in its primary meaning, above indicated, to describe the course and place of streams that have ceased to flow, and designate new beds of rivers, which owe their own existence either to natural or artificial causes. The geographer speaks of the channels of ancient rivers in which no water flows. Great floods or the industry of men sometimes change the course of streams by opening new channels. When the word is thus used, it means the bed of the river from bank to bank." Some of his subsequent remarks in regard to the channel of the Mississippi river, of which he was treating, apply with more force to the Missouri. After noting that the main river is always readily distinguished, he says: "The course of navigation follows the deepest water. This is sometimes on one side of the river, and very near the shore, and sometimes on the other. Sometimes it is at right angles with the current, and not unfrequently the navigator, in descending the river, must direct his vessel against the current, in order to keep in the deepest water. Changes are continually occurring in the line of deep water followed by the vessels, caused by the shifting nature of the sand bars everywhere found in the river. The course of navigation which follows what boatmen call the 'channel' is extremely sinuous, and often changing, and is unknown except to experienced navigators. On the other hand, the bed of the main river, is designated by the word 'channel,' used in its primary sense, is the great body of water flowing down the stream. . . . It cannot be possible that congress and the people of the State, in describing its boundary, used the word 'channel' to describe the sinuous, obscure, and changing line of navigation, rather than the broad and distinctly defined bed of the main river. The center of this river-bed channel may be readily determined, while the center of the navigable channel often could not be known with certainty. The first is a fit boundary line of a State; the second cannot be." It seems to be accepted law that, when a river suddenly changes its course or deserts the original channel, "the boundary remains in the

middle of the deserted bed." Buttenuth v. Bridge Co., 123 Ill. 535, 17 N. E. Rep. 439; St. Louis v. Rutz, 138 U. S. 245, 11 Sup. Ct. Rep. 337. And in the case in hand, it cannot be doubted that the boundary line between the two States at the place in controversy is a line equidistant from the well-defined shores of the stream at the time of the cut-off; and as all the land sued for is north of that line, and next to the Missouri shore, all of it is within the boundaries and jurisdiction of the State of Missouri.

2. The next inquiry in order is, what land did plaintiff's grantors acquire from the government under their grant of the fractional section quarters, bordering on the Missouri shore of the river? These subdivisions on the side next to the river all have a common meandering line designating the river shore. In the recent case of Hardin v. Jordan, 140 U. S. 371, 11 Sup. Ct. Rep. 808, 838, Mr. Justice Bradley, in delivering the opinion of the court, says, in regard to such lines: "It has been the practice of the government from its origin, in disposing of the public lands, to measure the price to be paid for them by the quantity of upland granted, no charge being made for lands under the bed of the stream or other body of water. The meander lines run along or near the margin of such waters are run for the purpose of ascertaining the exact quantity of the upland to be charged for, and not for the purpose of limiting the title of the grantee to such meander lines. It has frequently been held both by the Federal and State Courts that such meander lines are intended for the purpose of bounding and abutting the lands granted upon the waters whose margins are thus meandered, and that the waters themselves constitute the real boundary. Railroad Co. v. Schurmeir, 7 Wall. 272; Jefferis v. Land Co., 134 U. S. 178, 10 Sup. Ct. Rep. 518; Middleton v. Pritchard, 3 Scam. 510; Trustees v. Haven, 5 Gilman, 548, 558; Houck v. Yates, 82 Ill. 179; Fuller v. Dauphin, 124 Ill. 542, 16 N. E. Rep. 917; Boorman v. Sunnuchs, 42 Wis. 233; Boom Co. v. Adams, 44 Mich. 403, 6 N. W. Rep. 857; Clute v. Fisher, 65 Mich. 48, 31 N. W. Rep. 614; Ridgway v. Ludlow, 58 Ind. 248; Kraut v. Crawford, 18 Iowa, 549; Forsyth v. Smale, 7 Biss. 201; Rev. St. U. S. §§ 2395, 2396. . . . It has never been held that the lands under water in front of such grants are reserved to the United States, or that they can be afterwards granted out to other persons to the injury of the original grantees. . . . With regard to grants of the government for lands bordering on tide water, it has been distinctly settled that they only extend to high-water mark, and that the title to the shore and lands under water in front of lands so granted inures to the State within which they are situated, if a State has been organized and established there. Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State, a portion of the royalties belonging thereto, and held in trust for the public purposes of navigation and fishery, and cannot be retained or granted out to individuals by the United States. Pollard v. Hagan, 3 How. 212; Goodtitle v. Kibbe, 9 How. 471; Webber v. Commissioners, 18 Wall. 57. . . . This right of the States to regulate and control the shores of tide waters and the land under them is the same as that which is exercised by the crown of England. In this country the same rule has been extended to our great navigable lakes, which are treated as inland seas, and also in some of the States to navigable rivers, as the Mississippi, the Missouri, the Ohio and in Pennsylvania to all the permanent rivers of the State; but it depends on the law of each State to what waters and to what extent this prerogative of the State shall be exercised. In the case of Barney v. Keokuk, 94 U. S. 324, we held that it is for the several States themselves to determine this question, and, if they choose to resign to the riparian proprietor rights which properly belong to them in their sovereign capacity, it is not for others to raise objections. . . . The same view was taken in quite a recent case with regard to titles on the Sacramento river, under the law of California. Packer v. Bird, 137 U. S. 661, 11 Sup. Ct. Rep. 210. On the east side of the Mississippi, in the States of Illinois and Mississippi, a different doctrine prevails, and in those States it is held that the title of the riparian proprietor extends to the middle of the current in conformity to the rule of the common law; that the beds of all streams above the flow of the tide, whether actually navigable or not, belong to the proprietors of the adjoining lands. Middleton v. Pritchard, 3 Scam. 510; Morgan v. Reading, 3 Smedes & M. 366; St. Louis v. Rutz, 138 U. S. 226, 11 Sup. Ct. Rep. 337. In the one case, that of Iowa, the government grant was held to extend only to high-water mark; in the other cases, of Illinois and Mississippi, it was held to extend to the center of the stream; being governed in both cases by the respective laws of the States affecting grants of land bordering on the river. In one case the State, by its general law, does not allow the grant to inure to the individual further than to the water's edge, reserving to itself the ownership and control of the river bed; in the other cases the States allow the full common-law effect of the grant to inure to the grantee, reserving to themselves only those rights of eminent domain over the waters and the land covered thereby which are inseparable from sovereignty. As was well said by the Supreme Court of Illinois in Middleton v. Pritchard, *supra:* 'Where the government has not reserved any right or interest that might pass by the grant, nor done any act showing an intention of reservation, such as platting or surveying, we must construe its grant most favorably for the grantee, and that it intended all that might pass by it. What will pass, then, by a grant bounded by a stream of water? At common law this depended upon the character of the stream or water. If it were a navigable stream or water, the riparian proprietor extended only to high-water mark. If it were a stream not navigable, the rights of the riparian owner extended to the center thread of the current. At common law only arms of the sea and streams where the tide ebbs and flows are deemed navigable. Streams above tide water, although navigable in fact at all times or in freshets, were not deemed navigable in law. To these, riparian proprietors, bounded on or by the river, could acquire exclusive ownership in the soil, water, and fishery to the middle thread of the current, subject, however, to the public easement of navigation; and this latter, Chancellor Kent says, bears a perfect resemblance to public highways. The consequence of this doctrine is that all grants bounded on a river not navigable at common law entitle the grantee to all islands lying between the mainland and the center thread of the current; and we feel bound so to construe grants by the government according to the principles of the common law, unless the government has done some act to qualify or exclude the right. The United States have not repealed the common law as to their interpretation of their grants, nor explained what interpretation or limitation should be given or imposed upon the terms of the ordinary conveyances which they use, except in special instances; but these are left to the principles of law and rules adopted by

each local government where the land may lie. We have adopted the common law, and must therefore apply its principles to the interpretation of their grant.' These views are referred to with strong approval by Chancellor Kent in a note to the third volume of his Commentaries, p. 427, 6th Ed. (being the last edition under his own supervision.)" No words of ours could add to the force or lucidity of this statement of the law on this question, applicable as well to Missouri as Illinois; for we also have adopted the common law, and must apply its principles.

As was said by the Supreme Court of Michigan in the recent case of Butler v. Railroad Co., 48 N. W. Rep. 560: "This rule applies to grants by the United States government, as well as to grants by individuals. The legal maxim must here be borne in mind that all grants must be construed most strongly against the grantors. To this maxim the government forms no exception. Reservation cannot be implied. When, therefore, the government has surveyed its lands along the bank of a river, and has sold and conveyed such land by government subdivisions, its patent conveys the title to all islands lying betweeen the meander line and the middle thread of the river, unless previous to such patent it has surveyed such islands as governmental subdivisions, or expressly reserves them when not surveyed." Webber v. Boom Co., 62 Mich. 626, 30 N. W. Rep. 469: Fletcher v. Boom Co., 51 Mich. 277, 16 N. W. Rep. 645; Granger v. Avery, 64 Me. 292; Jones v. Soulard, 24 How. 41; Middleton v. Pritchard, *supra;* Chandos v. Mack, 77 Wis. 573, 46 N. W. Rep. 803; Railroad Co. v. Schurmeir, *supra;* Jefferis v. Land Co., 134 U. S. 178, 10 Sup. Ct. Rep. 518. And "it is laid down by all the authorities that, if an island or dry land forms upon that part of the bed of the river which is owned in fee by the riparian proprietor, the same is the property of such riparian proprietor. He retains the title to the land previously owned by him with the new deposits thereon." St. Louis v. Rutz, 138 U. S. 245, 11 Sup. Ct. Rep. 337 *loc cit.* These recent authorities render unnecessary a review of the many cases in which this question has been discussed, and clearly and satisfactorily answer the question propounded at the beginning of this paragraph—that the plaintiff's grantors acquired, from the government, title to the middle of the thread of the Missouri river opposite their surveyed riparian lands, which, according to the evidence, covers all the land sued for, and which plaintiff ought to recover, except as to so much thereof as the defendant may have acquired title by adverse possession. The rule governing such adverse possession would, of course, be the same as to the surveyed lands.

3. It will not be necessary to notice the instructions in detail or at length. The case was evidently tried upon the theory, broadly stated in the head-note to the case of Benson v. Morrow, 61 Mo. 345, "that, under the acts of congress and the decisions of the United States Supreme Court, the ancient doctrine distinguishing navigable and non-navigable rivers by their position above or below tide water is done away with; and the Missouri river is a navigable stream, and hence, as in other cases of navigable rivers, the proprietor of lands on its banks owns only to the water's edge." The decision in this case was rendered in 1875. It would not be profitable now to determine whether or not the deduction there drawn was warranted by the earlier decisions of the Supreme Court of the United States. It is evident, however, from the reading of the case, that this conclusion was reached in deference to what was then supposed by the court to be the doctrine of the United States Supreme Court upon the subject—a doctrine which, if ever, is now no longer maintained by that court, as is evidenced by the most recent decisions of that tribunal hereinbefore cited. With this idea eliminated, it is impossible to see now upon what principle the rights of riparian proprietors upon the shores of the Missouri can be governed other than upon the doctrine of the common law, applicable to all fresh water streams, made the law of this State by statute, and by which such proprietor owns to the middle of the thread of the stream, subject to the right of public navigation secured by acts of congress. This wholesome doctrine, so ably maintained by the Supreme Court of Illinois in Middleton v. Pritchard, *supra*, which commended itself so strongly to the mind of Chancellor Kent, and which has now received the sanction of the Supreme Court of the United States in Hardin v. Jordan, *supra*, ought to become the settled law of this State, as tending to the repose of the titles of its citizens to lands bordering on its streams, and to a definite and easily ascertained location of their boundaries. The Missouri river is important to the State only as a public highway and, so long as the law is maintained that makes it such, no public right, State or national, will be impinged in subjecting its bed to the staple and well-understood rule of the common law defining the boundaries of its riparian proprietors. The judgment, in my opinion, ought to be reversed, and the cause remanded for a new trial in accordance with these views.

JETSAM AND FLOTSAM.

WIDOWS NOT FAVORED.—It is generally supposed that women are practically, although not theoretically, favored in the law. A New York judge once justified a very doubtful ruling on a question of evidence in a railroad accident case, on the ground that "this court will always lean strongly toward the widow." But it seems that widows are not quite so leniently viewed in South Carolina; for in Herndon v. Gibson, 17 S. E. Rep. 145, the Supreme Court held, that where on a mortgage sale of lands a widow, dependent upon the property for her support, requested the by-standers not to bid against her, and she bought in the premises without opposition, the sale was void. It seems to have been differently held in Woody v. Smith, 65 N. C. 116, in the absence of proof that the auctioneer connived with the widow. But this is only one of a considerable number of radical differences between the Carolinas in legal notions. The "*American Law Review*" observes on this case that "the Supreme Court cannot compel the people of South Carolina to bid against a widow in humble circumstances," and asks, "How many successive sales will the Supreme Court set aside for that reason?" Now, we should arrange on the second, if not on the first, sale to have some of the widow's friends—say some of the "mourners" or contingent second husbands—make a few modest bids in opposition, and privately coax off other bidders. That is what we should do if we were counsel for the widow; but quite unfortunately we cannot be everywhere at once, and act for all the distressed widows in the country. By the way, a quite interesting chapter might be written on "The Law of Widows,"—say by Mr. R. Vashon Rogers. Of course, the writer should weed out all the law pertaining to married women.

HUMORS OF THE LAW.

The following is told of a Glasgow bailie: In Scottish courts of law witnesses repeat the oath with the right hand raised. On one occasion, however, the magistrate had a difficulty. "Hold up your right arm," he commanded. "I canna dae't," said the witness. "Why not?" "Got shot in that airm." "Then hold up your left." Canna dae that ayther—got shot in the ither ane, tae." "Then hold up your leg," responded the irate magistrate. "No man can be sworn in this court without holding up something."

There is a beautiful simplicity about the following advertisement, which is culled from an American source: "My wife, Anna Maria, has either ran away or been stolen. I promise to break the head of any one who brings her back to me. As to giving her credit, any tradesman can do so if he likes, but as I have never paid my own debts, it is not at all probable that I shall pay hers."

Judge (starting in to sentence a prisoner just convicted of burglary)—"The ingenuity, I am tempted to say genius, displayed in the commission of this burglary—"

Prisoner (interrupting)—"One moment, your Honor—I hope the reporters have caught that little compliment to my humble effort."

Lawyer (to applicant for employment)—"Such impudence! How can you expect to be employed by me, when only yesterday I barely managed to get you acquitted of a charge of larceny?"

Applicant—"It is just that circumstance that induced me to apply to you. You said so many kind and complimentary things about me to the jury that I thought you would deem it a privilege to have an opportunity of employing me about your person."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACCIDENT INSURANCE POLICY—Conditions.—Where an accident insurance policy is, by its terms, made payable in case of death "received through external, violent, and accidental means," the intent is that the means, or that which caused the injury, should be external, and not that the injury must be external.—AMERICAN ACC. CO. OF LOUISVILLE V. REIGART, Ky., 23 S. W. Rep. 191.

2. ACCIDENT INSURANCE—Disability.—Under an accident policy insuring one against loss of time resulting from bodily injuries effected through external violent and accidental means, "which shall, independently of all other causes, immediately, wholly, and continuously disable" the insured "from transacting any and every kind of business pertaining to his occupation," the insurance company is not liable to the policy holder for loss of time resulting from a physical injury, when it affirmatively appears that 30 days elapsed from the time the injury was received before the insured was disabled so he could not attend to his business; that he, being a merchant, was probably in his store every day during this period, giving more or less attention to his business, and did not till the end of that period abandon all attention to the same.—WILLIAMS V. PREFERRED MUT. ACC. ASS'N., Ga., 17 S. E. Rep. 982.

3. ADVERSE POSSESSION.—One who by mistake occupies for 20 years or more land not covered by his deed, with no intention to claim title beyond his actual boundary, wherever that may be, does not thereby acquire title by adverse possession to land beyond the true line.—PREBLE V. MAINE CENT. R. CO., Me., 27 Atl. Rep. 149.

4. ADVERSE POSSESSION—Color of Title.—Where, on its face, the written color of title under which land has been claimed and held adversely for about 15 years, during which time there has been no obstacle to bringing suit for its recovery, is ambiguous in respect to whether its terms ought to be construed as a deed conveying land in *præsenti* or as a testamentary paper, public policy and the general principle on which prescription rests require that the doubt should be given in favor of the occupant, and against the adverse claimant. For this reason the trial judge was correct in holding that the instrument in question was sufficient color of title on which to base a valid claim of title by prescription in behalf of the defendants.—WESTMORELAND V. WESTMORELAND, Ga., 17 S. E. Rep. 1034.

5. ADMINISTRATORS — Administration in Different States.—A widow, shortly after her husband's death, removed from Illinois to California, taking with her a policy of insurance on her husband's life, and there took out letters of administration, and brought suit on the policy. In the meantime an administrator had been appointed in Illinois, and had there brought suit on the policy: Held, that the pendency of the Illinois suit was no bar to the California suit, for the policy was assets of the estate in the latter State, and the issuance of the letters of administration was legal.—SMITH V. NEW YORK LIFE INS. CO., U. S. C. C. (Cal.), 57 Fed. Rep. 133.

6. ADMIRALTY — Practice — Assignment.—An assignment by the libelant in an admiralty case, who has reasonable assurance that he is entitled to recover a certain amount, of a definite sum to his counsel for professional services, to be paid out of any recovery that might be had, is sufficiently certain, and on sufficient consideration, to support a lien on the proceeds.—THE ALICE STRONG, U. S. D. C. (Ohio), 57 Fed. Rep. 249.

7. ALTERATION OF INSTRUMENTS.—A material alteration of a written instrument by a stranger without authority does not invalidate it.—MURRAY v. PETERSON, Wash., 33 Pac. Rep. 969.

8. ATTACHMENT — Bond.—Where a debt is alleged against only one defendant, and an attachment sought against his property, the attachment bond is properly made payable to him alone.—BRANSHAW v. TINSLEY, Tex., 23 S. W. Rep. 184.

9. ATTACHMENT — Non-residence.—Although the defendant may have left his former home in South Carolina with the intention never to return, yet, if he had not permanently located in this State, nor declared any purpose so to do except upon the happening of a contingency which in point of fact never happened, he was so far a non-resident as to be liable to attachment on that ground, and the mere fact that in his business as a railroad contractor he had a temporary place of abode, at which he might have found and served with process, does not render the attachment void.—HICKSON v. BROWN, Ga., 17 S. E. Rep. 1035.

10. ATTACHMENT — Preferential Mortgage. — Comp. St. Neb. ch. 6, § 29, avoids, as against creditors, assignments preferring one debt or class of debts, requiring releases or compromises, reserving interests to the assignor before payment of the debts, conferring any special powers on the assignee, or unaccompanied by inventory: Held, that this section did not change the debtor's common-law liberty to mortgage all his goods to certain creditors, if their debts be large enough to be adequate consideration, and this though immediate possession be given; nor can other creditors allege such a mortgage for a ground of attachment, as fraudulently intended to hinder them.—JAFFRAY v. WOLFE, Okla., 33 Pac. Rep. 945.

11. ATTORNEY AND CLIENT—Negligence.—An attorney who is notified by wire to make an attachment is not liable for negligence in so doing merely because the attachment is dissolved for insufficiency of the attorney's affidavit, unless it appears that such insufficiency was clearly established by the language of the statute, or by well settled decisions.—AHLHAUSER v. BUTLER, U. S. C. C. (Wis.), 57 Fed. Rep. 121.

12. BANKS AND BANKING — Collection of Draft—Negligence.—In an action against a bank for failure to promptly present a draft drawn by plaintiffs on an insolvent firm, an allegation in the declaration that plaintiffs drew the draft, delivered it to a certain collection agency, procured its indorsement, and "caused said draft, so indorsed, to be sent by mail, together with a statement of their account," to the bank for collection, shows such a direct relation of principal and agent between plaintiffs and defendants as will justify a recovery.—FINCH v. KARSTE, Mich., 56 N. W. Rep. 123.

13. BONA FIDE PURCHASER — Notice.—Notice to the attorney of a purchaser of land on paying for the same that the wife of the grantor claimed the property is notice to the purchaser.—EDWARDS v. HILLER, Miss., 13 South. Rep. 692.

14. BOUNDARIES — Highways.—The plaintiff claimed title to a tract of land under a deed bounding him by the sea shore and a road, and claimed the road to be a boundary, as if constructed in a right line with its general course until it should reach the shore, whereas, in fact, in building the road, it was defected northerly, and a few rods short of the sea-shore: Held, that the road, as actually built, was made a monument in his deed, and constitutes the plaintiff's boundary.—BROWN v. HEARD, Me., 27 Atl. Rep. 182.

15. CARRIERS OF PASSENGERS—Husband—Wife's Baggage.—Where husband and wife are traveling together over a railway whose business it is to carry passengers and their baggage, and the husband purchases the tickets representing the fares of himself and wife, and has his own and his wife's baggage checked to the point of their destination, himself receiving the checks representing the railway's receipts for such baggage, and the railway company loses or fails to deliver at the agreed point the trunk thus checked of the wife, containing her wearing apparel and that of her child, held that, under these circumstances the husband can, in his own name alone, without joining his wife, maintain an action for damages upon the contract thus made with him for the carriage of himself and wife, and their baggage, for the breach thereof by the railway in failing to deliver the baggage of the wife.—JACKSONVILLE, S. A. & H. R. RY. CO. v. MITCHELL, Fla., 13 South. Rep. 673.

16. CERTIORARI.—A writ of *certiorari* to review proceedings by a city to assess property for improvements will not be granted where the application is not made until after a lapse of two years, since, though no time is fixed by statute, the writ must be applied for within a reasonable time.—SPOONER v. CITY OF SEATTLE, Wash., 33 Pac. Rep. 963.

17. CHATTEL MORTGAGE—Bona Fide Purchasers—Notice.—The rule that the grantee in a quitclaim deed of real property takes the property subject to all prior equities and unrecorded deeds of his grantor, though he have no actual or constructive notice of the same, even if in force in this State (a point not decided), has no application to a bill of sale of personal property given and intended as a mortgage; and a bill of sale to a vendee in good faith for the value of all the right, title, and interest of the vendor in the personal property conveyed with a warranty of title, followed by a delivery of the possession of such personal property, is valid as against prior unfiled chattel mortgages of which such vendee had no actual or constructive notice.—ROSENBAUM v. FOSS, S. Dak., 56 N. W. Rep. 114.

18. CONSTITUTIONAL LAW — Bill of Discovery.—Code 1886, § 3546, relating to bills of discovery, as amended by Sess. Acts 1888-89, p. 96, providing that any number of judgment or other creditors may join as complainants in such bill, is not in conflict with Const. art. 1, § 12, "preserving the right of trial by jury," because it does not provide for a jury trial to determine the amounts due the several complainants.—COOK v. NEW YORK CONDENSED MILK CO., Ala., 13 South. Rep. 685.

19. CONSTITUTIONAL LAW — Interstate Commerce — Municipal License. — A municipal ordinance which imposes a license tax on every merchandise broker who maintains a warehouse or office within the city limits is void as to a broker whose sole business is making contracts by sample for the sale and delivery to citizens of the State of merchandise which, at the time of making the contract, is the property of citizens of other States, and is situated therein; for as to him it is a regulation of interstate commerce, and contravenes the provision of the federal constitution vesting power to regulate such commerce exclusively in congress.—IN RE ROZELLE, U. S. C. C. (Ark.), 57 Fed. Rep. 155.

20. CONSTITUTIONAL LAW—Titles of Acts.—Act Feb. 7, 1893, entitled "An act of amend 'An act to establish a new charter for the city of Demopolis,'" provides in section 26 that all funds arising under the general laws for liquor license issued to dealers within the city shall be paid over by the probate judge of the county to the city treasurer, for the support of the public schools of the city: Held, that the subject of said section was not "clearly expressed in the title," as required by Const. art. 4, § 2, the support of public schools not being a matter germane to municipal organization.—WOLF v. TAYLOR, Ala., 13 South. Rep. 688.

21. CONTRACTS—Mutuality.—After part performance, to the extent of going to New York and opening business, mutuality is not wanting in a contract which stipulates that one party shall go to that city, and there open and conduct a business on his own account for the sale of a commodity not an article of general commerce, and that the other party shall furnish and deliver to him, at a specified price, so much of the commodity, not exceeding a given quantity monthly, as he (the proprietor of the new business) shall pre-engage to his customers during the period of one year, the mode of conducting the new business contemplated

being that the proprietor of that business is to discover purchasers, make binding contracts with them, and then order and receive enough of the commodity from the other party to fill such contracts.—FONTAINE V. BAXLEY, Ga., 17 S. E. Rep. 1015.

22. CONTRACTS—Union Depot Company.—A contract whereby a certain railway company was admitted to the use of all tracks, privileges, and facilities of the St. Paul Union Depot Company pending litigation to determine the terms and conditions of a permanent admission, considered and construed.—CHICAGO, ST. P. & K. C. RY. CO. V. ST. PAUL UNION DEPOT CO., Minn., 56 N. W. Rep. 129.

23. CORPORATIONS — Beneficial Assessment Association—Receiver.—A court of equity has no jurisdiction to appoint a receiver of and dissolve a solvent beneficial assessment association on the ground of mismanagement, fraud, and the abuse of corporate powers.—MASON V. SUPREME COURT OF EQUITABLE LEAGUE, Md., 27 Atl. Rep. 171.

24. CORPORATIONS—Directors—Independent Business. —Directors, who are also officers, of a manufacturing corporation, if acting in positive good faith to the corporation and their costockholders, are not precluded from engaging in the building and operation of other distinct works in the same general business (here the manufacture of plate glass); and they do not stand, in respect to said works, in any trust relation to the corporation. — BARR V. PITTSBURGH PLATE-GLASS CO., U. S. C. C. of App., 57 Fed. Rep. 86.

25. CORPORATIONS—Powers—Guarantying Accommodation Paper. — A corporation, in the absence of an express grant, has no power to guaranty, for accommodation, the obligations of another corporation.—TOD V. KENTUCKY UNION LAND CO., U. S. C. C. (Ky.), 57 Fed. Rep. 47.

26. COURTS—Concurrent State and Federal Jurisdiction.—Where a State and a Federal Court have concurrent jurisdiction of a controversy, the court which first takes control of the subject-matter and of the parties cannot be ousted of its jurisdiction by subsequent proceedings instituted in the other court. — CENTRAL TRUST CO. OF NEW YORK V. SOUTH ATLANTIC & O. R. CO., U. S. C. C. (Va.), 57 Fed. Rep. 3.

27. COURTS — Special Judge — Power and Duties. — Under Rev. St. 1889, § 3326, giving the special judge elected by members of the bar, in case of the absence or disqualifications of the regular judge, all the powers of the circuit judge, he is under no duty or obligation to the regular judge; and the fact that he adjourned the court before the arrival of the regular judge, in violation of a promise made to the latter, does not affect the regularity of such action.—STATE V. ROSS, Mo., 23 S. W. Rep. 196.

28. COURTS—Supreme Court Decisions.—To overturn decisions of the Supreme Court, that court itself must overrule them, and, until then, they must be regarded as authority by the court of civil appeals. — JONES V. GULF, C. & S. F. RY. CO., Tex., 23 S. W. Rep. 186.

29. CREDITORS' BILL—Pleading.—In an equity suit by a judgment creditor to subject certain collateral securities held by creditors of the judgment debtor to the payment of judgment after satisfaction of the collateral holder's claims, the judgment debtor has no right to compel a corporation, some of whose stock is included in such collateral, to show its books, on the ground that the collateral holders are mismanaging the corporation, and depressing the value of its stock as security. — MCMULLEN V. RITCHIE, U. S. C. C. (Ohio), 57 Fed. Rep. 104.

30. CRIMINAL LAW — Appeal. — An objection that an indictment in one count charges more than one offense is not available on appeal, where no effort was made to have the prosecution elect as to which offense defendant should be tried on.—TOMLINSON V. TERRITORY, N. Mex., 33 Pac. Rep. 950.

31. CRIMINAL LAW — Burglary. — It is not cause for arresting the judgment, after a verdict of guilty of burglary, that the house alleged to have been broken and entered is described in the indictment as "the storehouse of Woodlawn, Leo & Macedonia Alliance Co-Operated Store." — BERRY V. STATE, Ga., 17 S. E. Rep. 1006.

32. CRIMINAL LAW—Defendant as Witness. — Under Code 1886, § 2766, providing that the objection that a witness has been convicted of an infamous crime goes to his credibility, and not to his competency, it is proper in a criminal case, where defendant testifies in his own behalf, to introduce evidence of a previous conviction of another crime, for the purpose, only, of attacking his credibility, if the evidence is expressly so limited by the court. — PRYOR V. STATE, Ala., 13 South. Rep. 681.

33. CRIMINAL LAW—Former Acquittal.—Where, on a trial for an assault with intent to commit murder, defendant is convicted of an assault with a deadly weapon, such conviction is an acquittal of the higher offense.—PEOPLE V. GORDON, Cal., 33 Pac. Rep. 901.

34. CRIMINAL LAW—Illegal Voting—Drunkenness as a Defense. — Drunkenness is not an excuse for crime unless the same was occasioned by the fraud, artifice, or contrivance of another or others, for the purpose of having a crime perpetrated. Consequently, if one or more persons give whisky to another, "in a social way, and with no view or purpose at the time" to induce him to commit a crime, and afterwards, while he is so drunk that he knows not what he does, procure him to commit a crime, he would be legally responsible, and subject to conviction for the same. — MCCOOK V. STATE, Ga., 17 S. E. Rep. 1019.

35. CRIMINAL LAW — Instructions.—A charge that, if the jury believe the evidence, they must find defendant guilty is error, as not requiring them to believe it beyond a reasonable doubt.—HEATH V. STATE, Ala., 13 South. Rep. 689.

36. CRIMINAL LAW — Homicide — Self-defense. — If a husband, knowing of his wife's criminal infidelity, deliberately lays a trap for her paramour by pretending to him and her that he (the husband) is going on a journey, when it is his purpose not to go, but to conceal himself and lie in wait at or near his home for the purpose of killing the paramour in case he should be caught in the guilty act, at the same time expecting and designing so to catch him, the paramour has a right to defend himself against a deadly assault made by the husband under such circumstances, though the assault be made while the guilty act is in progress; and if the husband be killed as matter of necessity, to prevent his assault from resulting in death, the homicide is justifiable.—WILKERSON V. STATE, Ga., 17 S. E. Rep. 990.

37. DEEDS—Consideration.—Where a conveyance was made in consideration of support for life. the grantor had no right, without the consent of the grantee, to rescind the contract by a subsequent conveyance to another, merely because the support was withheld. She could not thereby defeat the first deed, her redress being an action for the value of the support withheld, or an equitable action to rescind, if the special facts, such as insolvency, would make the latter the appropriate relief. — MCCARDLE V. KENNEDY, Ga., 17 S. E. Rep. 1001.

38. EJECTMENT—Evidence — Deed. — Deeds, although not links in derajgnment of title from original owners, are admissible in evidence when connected with possession of present owners, and of those under whom they claim, for the purpose of showing the boundaries of such possession, as well as the nature, extent, and description of their claim. Such conveyances are also admissible in aid of the presumption of a deed from one of the original grantors, arising from long possession of defendants and of those under whom they claim.—DUNN V. EATON, Tenn., 23 S. W. Rep. 163.

39. EJECTMENT — Justification.—Where a person has asked leave to intervene and defend in ejectment, and has been refused permission, the ousting, by a writ of

habere facias, directed to defendant in ejectment, of one who claims under such person, is without justification. —KREPPS v. MITCHELL, Penn., 27 Atl. Rep. 161.

40. EMINENT DOMAIN—Constructing Sewers.—Private property cannot be taken for a public use without just compensation being paid for the same. The building by a city of a sewer through a private lot necessarily takes and appropriates a portion of the property for the use of the public, and the same must be paid for, notwithstanding the fact that the market value of the lot may not be diminished by the building of the sewer.—SMITH v. CITY OF ATLANTA, Ga., 17 S. E. Rep. 981.

41. ENDOWMENT ASSOCIATION—Assessment.—The by-laws of an "endowment league" provided for general and endowment funds created by quarterly dues and monthly assessments, and for the payment of matured endowment coupons out of the general fund, provided the holder is "in good standing" at the maturity of the coupon. They also provided that, "when the demands on the endowment fund require, the levy of additional assessments shall be made;" that such fund should only be used to pay matured coupons; and that the board of directors are "invested with full power to enact laws for the government of the league:" Held, that such board had no authority, without the consent of all the members, to divide the endowment fund, and create a reserve fund, by amendment to the by-laws, so that the demands on the former fund would "require the levy of additional assessments," and add to the condition of payments of coupons that "the assessment or assessments levied for the month in which the coupon is payable" must be paid. — HOGAN v. PACIFIC ENDOWMENT LEAGUE, Cal., 33 Pac. Rep. 924.

42. ESTOPPEL.—Where the maker of a due bill, after its maturity, states to purchasers before they purchase it that it will be paid within a week or 10 days, he is estopped, in an action thereon, from setting up failure of consideration as a defense.—CARTER MERCHANDISE CO. v. DICKSON, S. Car., 17 S. E. Rep. 996.

43. EVIDENCE—Declarations of Agent.—Evidence of the declaration of an agent as to the contents of letters received by him from his principal is not admissible against the latter, in the absence of testimony showing that the letters had been lost or destroyed.—MOORE v. DICKINSON, S. Car., 17 S. E. Rep. 998.

44. EXECUTION—Exemptions.—One who, as the head of a family, has procured an exemption of personalty, and afterwards invested the same or a portion of the property in business, may in his own name recover from a wrongdoer property to which the former has acquired title in his business dealings, paying for it with some of the exempted property or its proceeds.—MCDUFFIE v. IRVINE, Ga., 17 S. E. Rep. 1028.

45. FEDERAL COURTS—Jurisdiction—Diverse Citizenship.—An averment that a corporation is a citizen of a certain State is insufficient to give a federal court jurisdiction. The averment should be that the corporation is organized under the laws of a certain State.—FRISBIE v. CHESAPEAKE & O. RY. CO., U. C. C. C. (Ky.), 57 Fed. Rep. 1.

46. GARNISHMENT—Exemption of Wages.—The evident purpose of chapter 204, Gen. Laws 1889, entitled "An act to fix the amount of wages of laborers exempt from process of attachment, garnishment, or execution," was to exempt such wages to the extent of $25 earned within 30 days next preceding the levy of the process; and such should be the construction given to the act. —BEAN v. GERMANIA LIFE INS. CO., Minn., 56 N. W. Rep. 127.

47. HABEAS CORPUS.—On *habeas corpus*, the petitioner sought his release on the sole ground that the United States Court in the Indian Territory had erred in directing a sentence of imprisonment for one year to be executed in a State penitentiary, but made no complaint as to the jurisdiction of that court over the offense or over the person, nor as to the legality of the proceedings which resulted in the verdict: Held, that as the erroneous direction could have been corrected in the trial court, had attention been called thereto, and still might be corrected by the Circuit Court of Appeals, the prisoner should be left to his remedy by writ of error, and his discharge refused.—IN RE BONNER, U. S. C. C. (Iowa), 57 Fed. Rep. 184.

48. HABEAS CORPUS—Contempt.—A District Court has no authority, in the absence of a proper motion to bring the matter before the court, and without written or oral evidence, to decide, upon "judicial knowledge," that a defendant is guilty of contempt in disobeying a provisional order, when such alleged disobedience occurs away from the court, and beyond its powers of observation.—IN RE SMITH, Kan., 33 Pac. Rep. 957.

49. INTOXICATING LIQUORS — Title of Statute.—The body of a penal statute, when broader in its terms than the title warrants, cannot be narrowed by construction so as to make the statute good for what is embraced within the title, unless the result thus arrived at will correspond with the real legislative intention. Thus, where the title of an act embraces "spirituous liquors," only, and the body extends to "intoxicating liquors of any kind or quality," and prohibits the sale thereof, it cannot be held that the legislature intended to prohibit the sale of only one kind, to-wit: spirituous liquors.—ELLIOT v. STATE, Ga., 17 S. E. Rep. 1004.

50. INSURANCE—Waiver of Forfeiture.—The levy and collection of an assessment by a mutual fire insurance company on the premium note of a member after the forfeiture of his policy, and knowledge of such forfeiture by the company, does not constitute a waiver thereof, where such assessment is made to pay losses occurring prior thereto.—FARMERS' MUT. FIRE INS. CO. OF DUG HILL v. HULL, Md., 27 Atl. Rep. 169.

51. JUDGMENT — Entry — Amendment.—Where judgment is entered otherwise than authorized by the decision, it may be amended by the court.—SAN JOAQUIN LAND & WATER CO. v. WEST, Cal., 33 Pac. Rep. 928.

52. JUSTICES OF THE PEACE—Elections in Cities.—The cities of the State of Kansas are "townships," within the meaning of the constitution and statutes for the purposes of the election of justices of the peace, and such officers, although elected within a city, are not strictly city officers. Their official duties are not limited to the boundaries of the cities in which they are elected, nor by the provisions of the charters or ordinances of the city in which they reside. Their civil and criminal jurisdiction are coextensive with their counties, except as otherwise provided by law.—STATE v. PARRY, Kan., 33 Pac. Rep. 956.

53. LANDLORD AND TENANT—Destruction of Premises.—Where a tenant under a lease pays rent monthly in advance, and the building is totally destroyed by fire, he can recover from the landlord the money paid for the rest of the month.—PORTER v. TULL, Wash., 33 Pac. Rep. 965.

54. LIENS—Wages—Waiver.—The lien of a laborer for his wages is not defeated by giving him a negotiable draft, which he afterwards indorses and negotiates for value, provided he takes the necessary steps in due time to enforce his lien, and enables himself to surrender the draft to the debtor, and does actually produce it, and offer to surrender it to the court which is called on to adjudicate upon the existence and enforcement of the lien. If, with the consent and approbation of his indorsee, the laborer has possession and control of the draft, with power to surrender it, his indorsement is virtually canceled, and the title is at least equitably in him for the purpose of enforcing his lien, he being liable to the indorsee upon account for the returned draft, and not necessarily upon the indorsement.—BALKCOM v. EMPIRE LUMBER CO., Ga., 17 S. E. Rep. 1020.

55. MANDAMUS — Jurisdiction of Supreme Court.—An ex-treasurer of the board of regents of the agricultural college is not a "State officer," within the meaning of Const. art. 4, § 4, giving the Supreme Court

original jurisdiction in *mandamus* as to all State officers, the term as used in the constitution only applying to the superior officers of the State.—STATE v. SMITH, Wash., 33 Pac. Rep. 974.

56. MARRIED WOMAN—Bona Fide Purchaser—Secret Equities. — Whatever the secret equties between a vendor and vendee, and whatever their rights as between themselves, the former, who has placed on the public records a title valid on its face, cannot urge such equities against a *bona fide* purchaser for value from the vendee, who acted on the faith of such recorded title.—BROUSSARD v. BROUSSARD, La., 13 South. Rep, 698.

57. MASTER AND SERVANT—Contributory Negligence. —The neglect of a locomotive engine driver to keep a proper lookout, and his consequent failure to avert a collision caused by the negligence of his empoloyer's vice principal, is not imputable as contributory negligence to the fireman of the same engine, who is injured in the collision.—CINCINNATI, ETC. R. CO. v. CLARK, U. S. C. C. of App., 57 Fed. Rep. 125.

58. MASTER AND SERVANT — Fellow-servants. — One working as fireman on a locomotive, with the permission of the railroad company, for the purpose of learning the business, is a fellow-servant of a train dispatcher employed by such company.—MILLSAPS v. LOUISVILLE, ETC. RY. CO., Miss., 13 South. Rep. 696.

59. MASTER AND SERVANT—Negligence.—The rule that a master is bound to furnish safe appliances, and cannot escape liability for failure to do so by intrusting the duty to a servant, by whose negligence a fellow-servant is injured, does not apply where several persons are employed to do certain work, and by the contract of employment, express or implied, they are to adjust the appliances by which the work is to be done.—BURNS v. SENNETT, Cal., 33 Pac. Rep. 915.

60. MASTER AND SERVANT — Vice principal—Fellow-servant.—A railroad yard was shown to consist of side tracks upon either side of the main track, adjacent to some principal station or depot, where arriving trains are separated and departing trains made up, and where such switching is done as is essential to the proper placing of cars for deposit or departure. All operation of the yard was under the direction and supervision of a yard master. The several yard switching crews were each under the control of a foreman or conductor. A brakeman of one of the crews claimed to have been injured by the negligence of his foreman in giving a signal at improper time, whereby the train was moved, and ran over his foot: Held, under authority of Railroad Co. v. Baugh, 149 U. S. 368, 13 Sup. Ct. Rep. 914, that the foreman and switchman were fellow-servants, and the railroad company was not liable for negligence of foreman resulting in an injury to switchman.—HARLEY v. LOUISVILLE & N. R. CO., U. S. C. C. (Tenn.), 57 Fed. Rep. 144.

61. MARITIME LIENS—Stevedore's Services—Presumptions.—The services of a stevedore in stowing cargo in other than the home port are services of a maritime nature, and the presumption is that they were rendered on the credit of the vessel.—NORWEGIAN STEAMSHIP CO. v. WASHINGTON, U. S. C. C. of App., 57 Fed. Rep. 224.

62. MARITIME LIENS—Priority.—The priority of maritime liens is determined according to their nature, and not according to the order in which suits are brought to enforce them.—THE JULIA, U. S. D. C. (S. Car.), 57 Fed. Rep. 233.

63. MECHANICS' LIENS—Covenant by Contractor.—The right of a material-man to a mechanic's lien cannot be released by a stipulation in the contract between the owner of the premises and the contractor, but only by a sufficient covenant.—SAMUEL J. CRESSWELL IRON WORKS v. O'BRIEN, Penn., 27 Atl. Rep. 131.

64. MECHANICS' LIENS—Filing Contract.—Code Civil Proc. § 1183, requiring contracts for buildings or improvements, where the price to be paid exceeds $1,000 to be in writing, and the contract or a memorandum thereof, setting forth, among other things, a statement of the general character of the work to be done, to be filed for record, failing in which, the contract to be void, and the owner liable for labor and materials, is for the benefit of laborers and material-men, as well as the owner, and failure to file the plans and specifications for a building, which are an essential part of the contract for its construction, is fatal.—GREIG v. RIORDON, Cal., 33 Pac. Rep. 913.

65. MECHANICS' LIENS—Limitation.—Code Ala. § 3041, providing that all mechanics' liens arising under that chapter shall be deemed lost unless suit for the enforcement thereof is commenced within six months after the maturity of the entire indebtedness secured thereby, refers only to a suit against the owners; and a lien is not lost, where such suit is brought in time, by a failure to make certain incumbrances parties thereto until more than six months, and the only effect of this omission is to leave open the question of priority between the two liens, for section 3030 declares that all persons interested in the matter in controversy "may" be made parties, "but such as are not made parties shall not be bound by the judgment or proceeding therein."—DE LA VERGNE REFRIGERATING MACH. CO. v. MONTGOMERY BREWING CO., U. S. C. C. of App., 57 Fed. Rep. 111.

66. MECHANICS' LIENS — Voluntary Services.—The mechanic's lien, though arising by virtue of express statute, is dependent on the existence of contract and the obligation of debt. There can be no lien in favor of a party who voluntarily performs a service without express or implied promise of payment.—COLE v. CLARK, Me., 27 Atl. Rep. 186.

67. MORTGAGE—Foreclosure.—In an action to foreclose a mortgage given to secure both a note and a contract, the complaint alleged the payment of the contract, and that there was a balance due on the note, and asked judgment on the note and foreclosure of the mortgage. The answer alleged the payment of the note, and that the contract had been canceled by agreement of the mortgagee. The court found that the note had been paid, but that the contract was in force and unpaid: Held, that plaintiffs were entitled to decree of foreclosure for the amount due on the contract.—JOHNSON v. POLHEMUS, Cal., 33 Pac. Rep. 908.

68. MORTGAGES—Foreclosure.—If, pending a regular proceeding to foreclose a mortgage upon realty, given by a testator, his executrix administers the mortgaged property by making a legal and valid sale thereof, this will bar the rendition of a judgment of foreclosure, but if the sale be either void or voidable the same will be no bar. The mortgage creditor may elect to ratify a voidable sale, and such election may be made, so far as the executrix is concerned, by continuing to prosecute his pending proceeding to foreclose the mortgage.—REED v. AUBREY, Ga., 17 S. E. Rep. 1022.

69. MORTGAGE — Foreclosure — Writs — Substituted Service.—A suit brought by the trustee under a mortgage to foreclose the same for the benefit of the bondholders secured thereby is a suit for the settlement of a trust, and where the bondholders intervene by a petition in the nature of a cross-bill, alleging misconduct on the part of the trustee whereby the value of their security is diminished, the matters thus arising are so connected with the subject matter of the original suit as to entitle the bondholders to substituted service on the trustee's attorneys, the trustee itself being a non-resident.—GASQUET v. FIDELITY TRUST & SAFETY VAULT CO., U. S. C. C. of App., 57 Fed. Rep. 80.

70. MORTGAGE — Subrogation.—The defendant purchased mortgaged premises, and, in the deed conveying same, expressly assumed the payment of the mortgage as part of the consideration: Held, that an indorser who had become liable upon the notes secured by the mortgage was entitled upon payment thereof to be subrogated to the rights and remedies of the holder of the notes, and might recover of the defendant the amount which he was obliged to pay by

virtue of the stipulation in its deed by which it became liable to pay the same. The subrogation extends in such case not merely to the mortgage security, but to the debt and the remedies to enforce the same.—NETTLETON v. RAMSEY COUNTY LAND & LOAN CO., Minn., 56 N. W. Rep. 128.

71. MUNICIPAL CORPORATIONS—Bonds—Recitals—Estoppel.—A purchaser of municipal bonds is bound to ascertain whether the municipality has power to issue them, and an utter want of such power is not cured by any recitals in the bonds.—COFFIN v. BOARD OF COMR'S OF KEARNEY COUNTY, U. S. C. C. of App., 57 Fed. Rep. 137.

72. MUNICIPAL CORPORATIONS—Defects in Street—Notice.—In an action against a borough for injuries resulting from a defective sidewalk, notice of the defects cannot be brought home to defendant by evidence that the person who was chief burgess at the time of the accident had, before he was elected burgess, called the attention of the chief of police to such defects.—LOHR v. BOROUGH OF PHILIPSBURG, Penn., 27 Atl. Rep. 133.

73. MUNICIPAL CORPORATION — Ordinance — Prosecution.—A constitutional provision that all prosecutions shall be conducted in the name of the State does not apply to prosecutions by cities for violation of ordinance.—CITY OF SPOKANE v. ROBISON, Wash., 33 Pac. Rep. 960.

74. MUNICIPAL CORPORATIONS — Sewer—Public Use.—The evidence introduced by the plaintiffs, taking it all together, was not sufficient to overcome the presumption arising from municipal legislation to the effect that the sewer for which the land of the plaintiffs was taken and appropriated was for public, rather than private use, and necessary to accomplish needful sanitary purposes for the welfare of the city.—MCDANIEL v. CITY OF COLUMBUS, Ga., 17 S. E. Rep. 1011.

75. MUNICIPAL CORPORATIONS — Streets.—Towns and cities are required by law to keep their roads and streets so that they shall be safe and convenient for travelers. Whatever their legal duty requires of them in that regard, they are bound by law to do, and cannot bind themselves to do more.—PENLEY v. CITY OF AUBURN, Me., 27 Atl. Rep. 158.

76. MUNICIPAL CORPORATION—Street Improvements—Assessment.—The principle of frontage assessment for the special benefits arising from street improvements is not necessarily wrong. If that mode, in any particular case, properly distributes the benefits among the owners benefited, there can be no objection to its use.—STATE v. MAYOR, N. J., 27 Atl. Rep. 172.

77. NEGOTIABLE INSTRUMENTS — Accommodation Indorsement.—If one affixes his signature to a printed blank for a promissory note, and intrusts it to another for the purpose of having the blanks filled up, and thus becoming a party to a negotiable instrument, he thereby confers the right, and such instrument carries on its face an implied authority, to fill up the blanks and complete the contract at pleasure, so far as is consistent with its printed words.—MARKET & FULTON NAT. BANK v. SARGENT, Me., 27 Atl. Rep. 192.

78. NEGOTIABLE INSTRUMENT — Bona Fide Purchasers—Notice.—The fact that the maker of a note told the president of the bank, at the office of a company of which they were both directors, that a certain note had been obtained from him by fraud, will not be held notice to the bank, where it afterwards discounts the note.—WASHINGTON NAT. BANK v. PIERCE, Wash., 33 Pac. Rep. 972.

79. NEGOTIABLE INSTRUMENT—Consideration.—Where one who is really surety for another gives a promissory note in discharge of the obligation in its original form, and the obligation has already been discharged by the principal debtor, the surety being ignorant of the fact, the note so given by the latter is without consideration, whether the maker had or had not inquired of the principal debtor to ascertain whether the original debt still subsisted or had been paid.—PETTYJOHN v. LIEBSCHER, Ga., 17 S. E. Rep. 1007.

80. NEGOTIABLE INSTRUMENT — Consideration. — A promise may be a good consideration for a promise when there is a complete mutuality of engagement, so that each has the right at once to hold the other to a positive agreement. — PREBLE v. HUNT, Me., 27 Atl. Rep. 151.

81. NEGOTIABLE INSTRUMENTS — Illegal Guaranty — Bona Fide Purchasers. — A bill brought by a railroad company to cancel its guaranty upon the bonds of another company, on the ground of illegality and fraud, is not demurrable because it fails to show that defendants are not *bona fide* holders for value, for, when fraud or illegality in the inception of negotiable instruments is shown, it devolves upon the indorsee to show that he is a *bona fide* holder. — LOUISVILLE, N. A. & C. RY. CO. v. OHIO VAL. IMPROVEMENT & CONTRACT CO., U. S. C. C. (Ky.), 57 Fed. Rep. 42.

82. NEGOTIABLE INSTRUMENTS — Pleading. — Under Code Civil Proc. § 85, requiring a complaint to contain "a statement of the facts constituting the cause of action in ordinary and concise language," a complaint averring that, on a certain date, defendant, for a valuable consideration, executed and delivered to plaintiffs his note of that date for the sum of $679.74, due at a certain date now past, with interest, etc.; that there is due and unpaid from defendant the sum of $977.47 to this date; and that plaintiffs are now the owners of the note,—is not bad for failure to aver that defendant ever made any promise to pay any money to plaintiffs, nor any facts implying such a promise, nor when, according to such promise, payment should be made.—SCHUTTLER v. KING, Mont., 33 Pac. Rep. 939.

83. NEGOTIABLE INSTRUMENT—Stipulation for Attorneys' Fees.—A note for a given sum, with interest and "attorneys' fees," includes only the attorneys' fees incurred in the trial court, and not those incurred by the holder in an Appellate Court to which the makers have carried the case. — MCCORMICK v. FALLS CITY BANK OF LOUISVILLE, U. S. C. C. (Ind.), 57 Fed. Rep. 107.

84. PARENT AND CHILD — Services. — Appellant had lived with her grandfather since she was four years old, and after majority continued in his family, rendering the same services as before. He never paid her any wages, nor promised her any. Two witnesses testified that he had said he intended to pay her, and would see her well paid. Litigation having arisen respecting his estate during his life, she accepted a settlement with the rest of the heirs, but afterwards filed a claim for wages for over nine years. Though her grandfather was still alive, she obtained no indorsement of the claim from him: Held, that she had not overcome the presumption that her services were gratuitous.—BIXLER v. SELLMAN, Md., 27 Atl. Rep. 137.

85. PARTNERSHIP — Incoming Partner.—An incoming partner is not liable for the debts of the old firm where there is nothing said or done by him that can reasonably be construed into a promise to become liable therefor.—WOLFF v. MADDEN, Wash., 33 Pac. Rep. 975.

86. PARTNERSHIPS — Power of Partner.—Irrespective of statute, authority on the part of a member of a farming partnership to bind the firm by giving in its name a promissory note for fertilizers may be established by proof that the fertilizers were necessary for carrying on the business of the partnership, were bought and used for that purpose, and that similar notes in the name of the firm had previously been given for a like purpose by the other partner, and had been recognized by the firm; it not appearing that there was any stipulation between the partners restricting to either one of them the power of purchasing or giving notes.—HYMES v. WELD, Ga., 17 S. E. Rep. 1002.

87. PRINCIPAL AND AGENT—Contracts for Directors.—A principal, with full knowledge of the facts, retaining and enjoying the fruits and benefits of an unauthorized contract, without objection, but with affirmative acts fairly tending to indicate approval, will be held to a ratification of the acts of his agent, even though he

would not be required under the circumstances to return the property which was the consideration of such unauthorized contract.—JEWELL NURSERY CO. v. STATE, S. Dak., 56 N. W. Rep. 113.

88. PRINCIPAL AND SURETY—Discharge of Surety.—A contract provided for a payment of 85 per cent. of the total cost of the completed work when it was, in the opinion of the party of the first part, half completed; such percentage to be carefully estimated by the engineer of said party, but such payment not to exceed $7,480. The party of the first part, relying on the fraudulent representations, of the party of the second part that the work was half completed, made a payment of $10,046.68: Held, that this discharged the sureties on the bond of the party of the second part.—BOARD OF COM'RS OF MORGAN COUNTY v. BRANHAM, U. S. C. C. (Ind.), 57 Fed. Rep. 179.

89. PUBLIC LAND—Mexican Land Grants.—Under Acts Cong. July 22, 1854, ch. 103, § 8, and July 15, 1870, ch. 292, reserving to congress final action in the adjustment and confirmation of claims under Mexican grants in Arizona, on report and recommendation of the surveyor general, a claim favorably reported by the latter, but not acted on by congress, is not a litigable title.—SANTA RITA LAND & MIN. CO. v. MERCER, Ariz., 33 Pac. Rep. 944.

90. PUBLIC LANDS—Rights of Way — Pre-emptions.—Act Cong. March 3, 1875, granting rights of way to railroads over the public lands, provides in section 4 that a company desiring the benefits of the act shall file a profile of its road, which, after approval by the secretary, shall be noted on the plats, "and thereafter" all lands crossed by said right of way shall be disposed of subject thereto: Held, that the grant passes title to the company on the filing of the profile, not on the filing of the articles and proof of organization.—ENOCH v. SPOKANE FALLS & N. RY. CO., Wash., 33 Pac. Rep. 966.

91. QUIETING TITLE — Res Judicata. — In an action to quiet title, it appeared that the ownership of part of the land in controversy had been adjudged to be in defendant in a former action between the same parties: Held, that such judgment was *res judicata* as to this tract.—DOWELL v. APPLEGATE, Oreg., 33 Pac. Rep. 937.

92. RAILROAD COMPANIES — Municipal Aid — County Bonds.—A county, with general powers to lend its credit in aid of railroads, issued bonds in exchange for the stock of a railway company on condition that the company build a railway of standard gauge through the county, which condition was subsequently fulfilled. In making this issue, all formalities required by law were complied with: Held, that the county could not set up the defense of *ultra vires*, in an action on the bonds, merely because the railway company was authorized to build only a narrow-gauge railroad.—BOARD OF COM'RS OF KINGMAN COUNTY v. CORNELL UNIVERSITY, U. S. C. C. of App., 57 Fed. Rep. 149.

93. RAILROAD COMPANIES — Negligence.—The N. & D. R. Co. leased its line, in good condition, to the L. & N. R. Co., by authority of Code Tenn. 1858, §§ 1122, 1128, permitting such leases, and providing that a lessee should hold a road so leased subject to the same liabilities as when it was in the hands of the lessor. The lease was silent as to liability for future negligence by the lessee. By permission of the lessee a mail crane was placed near the track, and thereafter a railway mail clerk, traveling under a contract between the United States and the lessee, was struck and injured by the crane, either because it stood too near the track, or because the lessee had allowed the track to get out of repair: Held, that there was no cause of action for such injury against the lessor.—ARROWSMITH v. NASHVILLE & D. R. CO., U. S. C. C. (Tenn.), 57 Fed. Rep. 165.

94. RAILROAD COMPANY — Stock Killing. — Where an action is brought against a railroad company for the negligent killing of a domestic animal, the plaintiff can, if he sees fit to do so, make out a *prima facie* case without showing actual negligence, by proving the value of the animal and the fact that it was killed by defendant's train of cars; but in such case, if the defendant, to overcome the statutory presumption of negligence arising from the killing, shows conclusively by undisputed evidence that the train in question was at the time of the accident in good repair and condition, and was equipped with the best modern appliances and improvements in use, and was operated skillfully and with due care, then, and in such case, the statutory presumption of negligence arising from the killing is rebutted and entirely overcome.—HODGINS v. MINNEAPOLIS, ST. P. & S. STE. M. R. CO., N. Dak., 56 N. W. Rep. 139.

95. RECEIVERS—Sale of Certificates — Ratification. — The president of a bank in which a receiver kept his deposits, having been authorized by the receiver to sell certain receiver's certificates, made the sale after his authority had been revoked, and caused the amount realized to be credited to the receiver on the books of the bank, and on the receiver's pass book. The receiver did not repudiate the sale, but, on the contrary, drew checks against the deposits, and reported the transactions to the court, which, in the foreclosure decree, recognized the validity of the certificates, and directed that the sale should be made subject thereto: Held, that the receiver was estopped to question the validity of the certificates, as against an innocent purchaser.—ALABAMA IRON & RY. CO. v. ANNISTON LOAN & TRUST CO., U. S. C. C. of App., 57 Fed. Rep. 25.

96. REMOVAL OF CAUSES — Practice. — In a cause removed to a Federal Circuit Court from a State Court which had refused to order the removal, plaintiff, after refusing to recognize the jurisdiction of the Federal Court, although he had due notice of its order docketing the cause, will not be heard in the Federal Court in opposition to a motion to dismiss the cause because it has been pending three stated terms without prosecution.—MCMULLEN v. NORTHERN PAC. R. CO., U. S. C. C. (Wis.), 57 Fed. Rep. 17.

97. REMOVAL OF CAUSES—Waiver of Pleas to Jurisdiction.—While the filing of a petition in the State Court for removal to the Federal Court is not such an appearance in the State Court as will waive the petitioner's exception to its jurisdiction in case the attempt to remove is unsuccessful, yet the actual removal of the cause to the Federal Court subjects the petitioner to the jurisdiction of that court, gives it jurisdiction for the purpose of trial and final disposition of the case, and is a waiver of a privilege claimed by pleas that the suit is not for the recovery of real property, the possession thereof, or for a trespass thereto, or that petitioners are not resident freeholders or householders in the county where the suit is brought, but of another county, which pleas are by the State statute pleas in abatement.—HINDS v. KEITH, U. S. C. C. of App., 57 Fed. Rep. 10.

98. SALE — Conditional — Recording.—According to the true intent and meaning of the act of 1881, touching conditional sales of personal property, such a sale, evidenced by contract in writing, executed and attested in the manner requisite to mortgages on personal property, is effectual to retain title in the vendor as against all creditors of the conditional vendee, except those who subsequently obtain liens before the vendee reclaims the property.—RHODE ISLAND LOCOMOTIVE WORKS v. EMPIRE LUMBER CO., Ga., 17 S. E. Rep. 1012.

99. SALE—Possession—Instructions.—S sold to plaintiff horses in the pasture of R, where they had been put by C, with the consent of S, at the close of a season for which C had hired them. R refused to deliver them on the order of S to plaintiff, when, 12 days after buying them, he first attempted to get possession; C having given instructions when he left them that they should be delivered to no one else. On the following day they were taken by defendant, as sheriff, on an attachment in an action by C against S: Held, error to instruct that when personal property is so situated that the purchaser is entitled to and can rightfully take possession at his pleasure, he is considered as having

actually received it, as the statute requires.—PEARCE v. BOGGS, Cal., 33 Pac. Rep. 906.

100. SALE — Revocation — Principal and Agent.—An order for goods to a manufacturer, given to his agent, to be forwarded to him, until it is accepted and notice of acceptance given the maker, does not constitute a contract of sale, or for the manufacture of the goods, so as to prevent the maker from revoking it.—HARVEY v. DUFFEY, Cal., 33 Pac. Rep. 897.

101. SALE OF COTTON — Failure of Payment.—Under section 1593 of the Code, cotton sold by a planter or commission merchant on cash sale does not become the property of the buyer until the same shall have been fully paid for, although it may have been delivered into the possession of the buyer. This being so, the seller may, until payment has been made, assert his ownership either against the buyer or an innocent purchaser obtaining the cotton from the latter for value.—SAVANNAH COTTON-PRESS ASS'N v. MCINTIRE, Ga., 17 S. E. Rep. 1023.

102. SALE TO PARTNERSHIP—Delivery.—Where a mercantile partnership, by a parol contract, purchased from a seller, with whom it had previously dealt, goods to the amount of more than $50, to be delivered at a future day, and before the delivery was made the partnership was dissolved, and one of the partners retired therefrom, he would nevertheless be liable for the price of the goods delivered after the dissolution, and received by the other partners, unless the seller had actual notice of the dissolution at or before making the delivery; and the burden of proof is on the retiring partner to show that the seller had such notice.—MOORE v. DUCKETT, Ga., 17 S. E. Rep. 1037.

103. SHIPPING — Limitation of Liability.—A barge without motive power, which is used for transporting excursion parties on New York harbor and adjacent waters, is within the limited liability acts of the United States.—IN RE MYER'S EXCURSION & NAVIGATION CO., U. S. D. C. (N. Y.), 57 Fed. Rep. 240.

104. SLANDER — Malice — Evidence.—In an action of slander, for the purpose of showing malice, the utterance of the slanderous charge on other occasions, either prior or subsequent to the time laid, is competent as showing that the words charged were spoken maliciously, and thus tended to aggravate the wrong and injury for which the plaintiff seeks to recover compensation.—CONANT v. LESLIE, Me., 27 Atl. Rep. 147.

105. SLANDER—Special Damages.—Where, in an action for slander, there was no evidence of special damages resulting from the utterance of the slander, and, from the instructions given, the jury were warranted in assessing such damages, and may have done so, a judgment for plaintiff will be reversed on appeal.—WALLACE v. RODGERS, Pa., 27 Atl. Rep. 163.

106. SPECIFIC PERFORMANCE.—An agreement to make a final payment on land for the vendee, and take the title, and, on repayment by him of said sum, with interest and expenses, to convey to him, is enforceable in equity, though not in writing.—HODGES v. THOMPSON, Ala., 13 South. Rep. 679.

107. SUNDAY LABOR — Running Trains — Interstate Commerce.—The provision of section 4578 of the Code making it a misdemeanor to run a freight train upon any railroad in this State on the Sabbath day is a regulation of internal police, and not a regulation of commerce. It is not in conflict with the constitution of the United States, even as to freight trains passing through the State from and to adjacent States, and laden exclusively with goods and freight received on board before the trains entered this State, and consigned to points beyond its limits.—HENNINGTON v. STATE, Ga., 17 S. E. Rep. 1009.

108. TAXATION—Enjoining Collection.—The complaint showed that the assessment roll was defective; that it was filed after the proper time; that the assessor gave no notice of the meeting of the board of equalization; that no such meeting was held; that neither plaintiffs nor any other taxpayers were allowed to examine said roll, or to appear before any board; that plaintiffs' property was wrongly assessed, at too high a value, and not in proportion with other like property; that, had plaintiffs known that said roll was made or being made, and been allowed a hearing, and had a board examined said roll, the valuation would have been greatly reduced; that certain property had been valued at $14,293, when its true cash value did not exceed $10,000; and that the County Court had levied a tax of 19½ mills: Held, that plaintiffs could not, on this showing, have the collection of the tax enjoined without first paying or tendering the amount which they conceded to be right.—WELCH v. CLATSOP COUNTY, Oreg., 33 Pac. Rep. 934.

109. TRADE NAMES — Infringement. — A right may be acquired to use a geographical name as a trade name in connection with mineral water derived from springs in that locality by persons who own all of such springs, and the use of such name by others who obtain their waters elsewhere will be enjoined. — LA REPUBLIQUE FRANCAIS v. SCHULTZ, U. S. C. C. (N. Y.), 57 Fed. Rep. 37.

110. TRUSTS—Gifts Causa Mortis.—Conceding that the assignment of a bank book was a gift *causa mortis*, the gift was revoked where the assignor, a few minutes before his death, told the assignee to go to the bank, get the money, and bring it to him, so that, the assignor having died intestate before the return of the assignee, the assignee would hold the funds in trust for the assignor's heirs.—DORAN v. DORAN, Cal., 33 Pac. Rep. 929.

111. VENDOR'S LIEN—Notice — Innocent Purchaser.—Where a bank acquires title to real estate by conveyance from its president, who held the land under a deed reciting full payment of the purchase money, and it has no actual knowledge that the purchase money was not in fact paid, it is an innocent purchaser without notice, and is not chargeable with constructive notice because of the knowledge of its president.—FIRST NAT. BANK OF SHEFFIELD v. TOMPKINS, U. S. C. C. of App., 57 Fed. Rep. 20.

112. VENDOR AND PURCHASER—Quantity of Land.—In case of the sale of a certain tract as containing 196 acres, "more or less," at $27.56 per acre, a deficiency of 1.37 acres, not arising from fraud, does not entitle the purchaser to deduction from the price.—THE CHANCELLOR v. FRENCH, N. J., 27 Atl. Rep. 140.

113. VENDOR AND VENDEE — Abstract of Title. — A vendor's contract to furnish an abstract of title "showing a good and clear title, free from defects," is not performed if the abstract show defects which may or may not exist in the title as tested by the original records, and an incumbrance which may or may not be barred by limitation.—KANE v. RIPPEY, Oreg., 33 Pac. Rep. 936.

114. WILLS—Contest — Evidence. — Under Code Civil Proc. §§ 1330, 1331, providing that, where a will is admitted to probate without contest, any person interested may within one year initiate a contest, and if it shall appear that the will is invalid, etc., the probate must be annulled and revoked, and the powers of the executor must cease, where a contest is initiated in time, and the will found invalid, it must be set aside *in toto*, and not left standing as to persons not joining in the contest.—CLEMENTS v. MCGINN, Cal., 33 Pac. Rep. 920.

115. WRONGFUL ATTACHMENT — Instructions. — It is harmless error to charge that if plaintiff departed from the territory, and left no suitable person, of at least the age of 14 years, at his usual place of abode therein, so that service of summons could not be made on him, defendant would have a right to have an attachment issued against him, where the court qualified the charge by adding: "Provided he departed from the territory to the injury of his creditors, or [defendant] had probable cause to believe he so left."—HAMER v. FIRST NAT. BANK OF OGDEN, Utah, 33 Pac. Rep. 941.